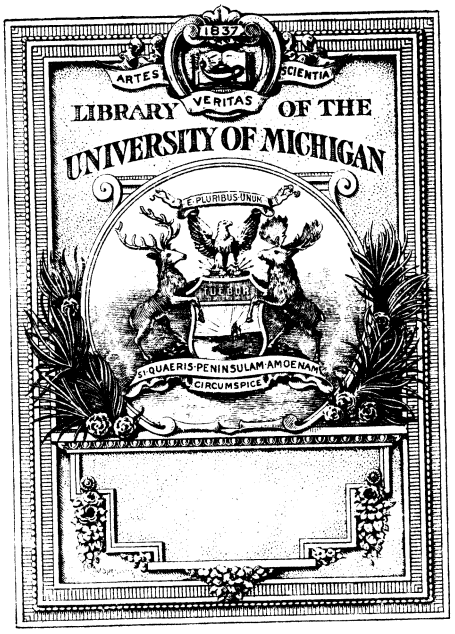
PROCEEDINGS

OF THE

American Political Science Association

1904

VOL. I.



PROCEEDINGS

OF THE

American

Political Science Association.

HELD AT

CHICAGO, ILL., DECEMBER 28 to 30, 1904.

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CONTENTS.

The Organization of the American Political Science Association.

In this the first report of the association it has been thought appropriate to include an account of the steps leading up to its establishment.

In December, 1903, the following call for a National Conference on Comparative Legislation was sent out to a number of persons known to be interested in the subject.

DEAR SIR:

Your attendance is respectfully requested at an informal conference on comparative legislation, to be held at Washington, D. C., December 30 and 31, 1902.

The formation of an American Society of Comparative Legislation has been suggested as particularly desirable because of the complexity of our system of federal government. In calling the proposed conference, however, the undersigned do not commit themselves as to the necessity of a permanent organization in addition to the various learned societies already existing which take more or less active interest in legislative problems. On the contrary, one of the main objects in calling the conference is to obtain a representative expression of opinion as to whether it will be possible for existing institutions to do the work imperatively demanded in this field.

The headquarters of the conference will be at the President's office, Columbian University, and the first session will be called to order on Tuesday afternoon, December 30, at 2 o'clock.

If you are unable to attend the conference in person, you are invited to express in writing your views as to the manner in which the study of legislation would be best promoted, and also to send a deputy to represent the institution which you would represent if present.

Address replies to Mr. Charles W. Needham, Columbian University, Washington, D. C.

Respectfully,

(Signed) CHARLES W. NEEDMAN, MAX WEST,
CARROLL D. WRIGHT, JOSIAH STRONG,
MARTIN A. KNAPP, MUNROE SMITH,
MELVIL DEWEY, JEREMIAH W. JENKS,
JOHN H. FINLEY, JOHN W. BURGESS,
J. R. PARSONS, JR., FRANK J. GOODNOW.
ROBERT H. WHITTEN,

The discussion had at the meeting thus called disclosed a general belief among those present that instead of the establishment of a Society of Comparative Legislation a National Association should, if possible, be created, whose province should embrace the whole field of Political Science, and thus include Comparative Legislation as one of its special topics. Thereupon the following resolution was adopted:

"That a committee be appointed to confer with the American Economic Association, the American Historical Association, and others regarding the advisability of forming a national Political Science Association; that said committee arrange a meeting at its discretion and make a report."

It was further voted that the committee should consist of fifteen members, and that Prof. J. W. Jenks be its chairman, with power to appoint the other members.

In pursuance of the inquiry which it was authorized to make, the following circular letter was sent out by this committee:

DEAR SIR:

On December 30th a conference on comparative legislation which had been called by President Needham of Columbian University, Carroll D. Wright, Commissioner of Labor, Martin A. Knapp, Chairman Interstate Commerce Commission, Professors Finley, of Princeton, Munroe Smith, Burgess, and Goodnow, of Columbia University, and others, was held in Washington. While it seemed to be the general impression that more associative work in comparative legislation should be done, the discussion showed a strong sentiment in favor of the establishment of a general association for the study of Political Science, which

should of course include comparative legislation as one of its subjects of investigation, and which would naturally work harmoniously with existing associations, or possibly be merely a joint committee of such organizations. As a result of this discussion there was adopted the following resolution:

'That a committee be appointed to confer with the American Economic Association, the American Historical Association and others regarding the advisability of forming a national political science association, and that said committee arrange a meeting at its discretion and make a report.'

It was decided that the committee consist of fifteen members, of which the undersigned should be the chairman, with power to appoint the other members. The following persons have been nominated, and all heard from have accepted the appointment. One has not yet replied. Judge Simeon E. Baldwin, New Haven, Conn.; Dr. Edward Dana Durand, Census Office, Washington; Prof. John H. Finley, Princeton University; Judge William Wirt Howe, New Orleans, La.; Prof. Harry Pratt Judson, University of Chicago; Martin A. Knapp, Chairman of the Interstate Commerce Commission; President C. W. Needham, Columbian University; Prof. Paul S. Reinsch, University of Wisconsin; Prof. Leo S. Rowe, University of Pennsylvania; Frederick J. Stimson, Esq., Boston, Mass.; Rev. Josiah Strong, President American Institute for Social Service, New York City; Dr. Max West, Richmond Hill, N. Y.; Dr. Robert H. Whitten, Legislative Librarian, State Library, Albany; Prof. W. W. Willoughby, Johns Hopkins University; Jeremiah W. Jenks, Cornell University, Chairman.

To aid the committee in its work, will you kindly express your opinion on the subject under discussion, covering the following points:

1. Is it desirable that there be established a national association for the study of Political Science, which shall be organized along the same lines as the American Economic and American Historical Associations, and possibly be affiliated closely with them?

2. Can existing associations do the work satisfactorily?

3. If so, what associations should unite in this work and in what ways, that is, by separate or joint committees of such associations, or otherwise?

4. Make other suggestions on the subject.

The committee after securing the opinions of persons interested expects to meet in conference with a committee of the American Historical Association and the Executive Committee of the American Economic Association in order to formulate plans. A report will thereafter be made at a meeting called for the purpose.

Very respectfully yours,

JEREMIAH W. JENKS, *Chairman.*

In response to a call issued by the chairman, a meeting of the committee of fifteen was held at the Murray Hill Hotel, New York, April 24, 1903. The following members were in attendance: Jeremiah W. Jenks, chairman; Simeon E. Baldwin, John H. Finley, Paul S. Reinsch, Josiah Strong, Max West, Robert H. Whitten, and W. W. Willoughby.

Professor Jenks reported that he had sent out two hundred letters to persons specially interested in political science, chiefly members of the American Economic Association and of the American Historical Association asking their opinion as to the desirability of an organization exclusively for work in political science and comparative legislation. Based upon the results of this investigation, the Committee adopted the following resolution:

"Resolved: That there should be some more distinct means than now exists for promoting studies and publications in this country upon the subject of political science, including especially comparative legislation, administration, and public law; and that we request the American Historical Association and the American Economic Association to set apart a time during the week of their next meetings for such of their members as may desire to confer with each other and any other persons as to the expediency of effecting some organization in connection with said associations or the American Social Science Association or of forming an independent society in affiliation with one or more of said societies for the purposes above indicated."

Professor Jenks stated that he was going abroad for several months and suggested that a vice-chairman or executive committee be appointed to act in his absence. On motion, Professor Willoughby was elected vice-chairman.

At an adjourned meeting of the committee held April 25 at the City Club, New York, the following resolution offered by President Finley was adopted:

"Resolved, That the vice-chairman be requested to draft a letter to be sent, after submission to representatives of the American Historical Association and the American Economic Association, to persons specially interested in the study of political science and comparative legislation and to tabulate a list of replies for the meeting to be held in New Orleans."

In pursuance of the authorization thus given, Professor Willoughby, with the approval of the other members of the committee, sent out to some three hundred and fifty persons the following circular letter.

BALTIMORE, MD., OCTOBER, 1903.

DEAR SIR:

At a meeting held in Washington, D. C., December 30, 1902, called primarily for the purpose of considering the advisability of establishing an association for promoting in the United States the study of comparative legislation, there was suggested and discussed the need for a national association that should comprehend within its sphere of interest the entire field of Political Science, and thus, within such field, to do a work similar to that now being done by the American Economic and the American Historical Associations for Economics and History respectively. The outcome of this discussion was the appointment of a committee of fifteen, empowered to enter into communication with such individuals and associations as should be thought likely to be interested, with a view to discovering, if possible, how general is the demand for such a new association.

As a result of this investigation, this committee has found existing a strong and widespread demand for the provision of some better means than now exist whereby Political Science, as distinguished from History and Economics, may have its special interests directly represented and advanced. This committee has therefore decided to call a meeting of all those interested for the purpose of taking such definite steps in the matter as may then seem best. It is sincerely hoped that you will be able to be present.

The place of this meeting will be New Orleans, La., and the

date, Wednesday afternoon, December 30, 1903. At this time and place the American Economic and the American Historical Associations will hold their joint annual meeting. Persons desiring to attend this Political Science meeting will thus not only be enabled to obtain the benefit of the reduced railway fare (single fare plus twenty-five cents for a round trip) offered to the members and friends of the two associations mentioned, but will have the opportunity of meeting the members of these associations, and attending their scientific and social gatherings. These associations, it should be said, have kindly agreed to announce upon their printed programmes that this Political Science meeting is to be held, and furthermore, to leave free the afternoon upon which this meeting is to be held in order that such of their members as may be interested may be enabled to attend.

Althought it seems generally agreed that some better representation of Political Science than now exists should be provided, the investigation of this committee has shown that considerable difference of opinion exists as to the best means, or, at least, the most feasible means of securing it. By some it is declared that the immediate needs of political scientists may be satisfied by the creation of a Political Science "Section" in the American Economic, or in the American Historical, or in the American Social Science Association, or in all three associations, the sections thus created to form a joint section, to which may be assigned a certain part of the programmes of the annual meetings of these associations. By others there is urged the establishment of a new association to be named (probably) "The American Political Science Association," and to be affiliated with, or at least to act in harmony with, the American Economic, the American Historical, or other scientific associations.

By those who are of the first view, it is argued that not only will there thus be avoided the expense, the additional labor and the danger of weakening existing organizations—all necessarily involved in the establishment and maintenance of a new association—but that, upon the other hand, the probable effect will be to strengthen the old associations by attracting to them new members and giving the assurance of an increased attendance at their meetings.

In opposition to this plan, it is urged by those who favor the establishment of a new association that, in the first place, such a political science "section" will not attract the active

support that a new national association will be likely to enlist; and, in the second place, that it will not satisfy the needs of the political scientists. It is declared by them that what they desire is not merely an opportunity to read papers and have them published in the reports of the annual proceedings, but the establishment of some representative body that can take the scientific lead in all matters of a political interest, encouraging research, aiding if possible in the collection and publication of valuable material and, in general advancing the scientific study of politics in the United States.

Within such an association, if established, could be created sections dealing with such distinct topics as

1. Comparative legislation, including the practical operation of statutes, uniform legislation and the promotion of publications, especially indexes and digests of record material.

2. International law, including diplomacy.

3. Constitutional law, including law-making and political parties.

4. Administrative law, including colonial, national, state, and local administration.

5. Historical jurisprudence.

6. Political theory.

Such an association as this, it is declared, will be likely to attract the support not only of those engaged in academic instruction, but of public administrators, lawyers of broader culture, and, in general, all those interested in the scientific study of the great and increasingly important questions of practical and theoretical politics. Affiliated with the American Historical and the American Economic Associations it is asserted that a group of societies will be created that will be able to assume and maintain a leadership in these allied fields of thought that can be subject to no dispute.

Comparing the relative advantages and disadvantages of the two plans above outlined, it is seen that the question practically reduces itself to this: The establishment of a new and independent Political Science Association is, when looked at from the standpoint of the political scientist, more desirable than the creation of political science sections in any existing associations. At the same time, its establishment will be more difficult and its effect may be to narrow the field and possibly to lessen the membership of these associations. Whether or not, therefore, the project

should be attempted would seem to depend upon the amount of active support it will receive. This, of course, will have to be determined at the meeting which, as above said, is to be held at New Orleans. In the meantime, this letter is sent to you to acquaint you with what has been done and what is proposed to be done, and with the earnest hope that you will consider the matter carefully and let this committee know by letter as soon as possible your judgment as to the best method for carrying on this work, with reasons, briefly given, for the position which you occupy. Please state whether, if a new association be formed, you will join it, and if so, whether this will affect your membership or interest in any existing associations, if you are connected with one or more of them.

Kindly send your reply to Prof. W. W. Willoughby, Vice-Chairman of the Committee, Johns Hopkins University, Baltimore, Md.

Full information regarding special railway rates and hotel accommodations, together with copies of the programme of the meeting of the American Historical Association may be obtained by addressing Mr. A. Howard Clark, Smithsonian Institution, Washington, D. C. Similar information regarding the meeting of the American Economic Association will be furnished, upon application, by Prof. Frank A. Fetter, Ithaca, N. Y. Professor Willoughby, upon request, will gladly give any further information that may be desired regarding the Political Science meeting.

Very sincerely yours,

(SIGNED BY THE COMMITTEE).

At four o'clock in the afternoon of December 30, 1903, the meeting called for in this circular letter, was called to order by Professor Willoughby, in the absence of the chairman of the committee, in the Tilton Memorial Library of Tulane University, New Orleans, La. Among those present at this meeting were the following:

Frank J. Goodnow, New York.
W. W. Willoughby, Baltimore, Md.
Theodore Marburg, Baltimore, Md.
Geo. Winfield Scott, Washington, D. C.
Worthington C. Ford, Washington, D. C.
Paul S. Reinsch, Madison, Wis.
James A. Woodburn, Bloomington, Ind.

Maurice H. Robinson, Urbana, Ill.
Robert H. Whitten, Albany, N. Y.
F. R. Clow, Oshkosh, Wis.
George H. Haynes, Worcester, Mass.
John A. Fairlie, Ann Arbor, Mich.
James Sullivan, 308 W. 97th St., New York City.
John R. Ficklen, Tulane University, New Orleans.
C. H. Huberich, University of Texas, Austin, Texas.
W. H. Hatten, New London, Wis.
Wm. A. Schaper, University of Minnesota, Minneapolis.
Henry C. Stanclift, Cornell College, Mount Vernon, Iowa.
J. J. McNulty, College of the City of New York.
Walter E. Clark, College of the City of New York.
S. E. Sparling, University of Wisconsin.
F. A. Cleveland, New York City.
H. S. Smalley, University of Michigan, Ann Arbor, Mich.
C. E. Merriam, University of Chicago.
Isidor Loeb, University of Missouri, Columbia.

After calling the meeting to order, Professor Willoughby reported that the answers to the letter of inquiry which he had sent out showed a practically unanimous opinion upon the part of those whose special interests were in the field of political science, that an independent national political science association should be established. Furthermore, he reported that written and personal inquiries instituted by the members of the committee of fifteen showed that should such an association be established it would almost certainly be able at once to obtain a membership sufficient for its support. In behalf of the committee it was therefore recommended by Professor Willoughby that the meeting organize itself for the purpose of establishing the association.

Whereupon Prof. F. J. Goodnow was nominated and elected chairman of the meeting, and Professor Willoughby its secretary.

A motion was then made and carried that the chair appoint a committee of five to draft a constitution. The following were appointed members of this committee: Professors Isidor Loeb, Chairman; P. S. Reinsch, W. A. Schaper, J. A. Fairlie, and Mr. Robert Whitten.

A constitution was thereupon reported, read by sections,

and after slight amendments, adopted. In accordance with a provision of the constitution thus adopted, the chairman appointed Professors S. E. Sparling (chairman), C. E. Merriam, and W. A. Schaper members of a committee to nominate officers of the Association for the year ending December 31, 1904.

This committee made the following nominations, and the gentlemen named were unanimously elected the first officers of the Association:

President: F. J. Goodnow, Professor of Administrative Law, Columbia University.

First Vice-president: Woodrow Wilson, President of Princeton University (declined).

Second Vice-president: Paul S. Reinsch, Professor of Political Science, University of Wisconsin.

Third Vice-president: Hon. Simeon E. Baldwin, New Haven, Conn.

Secretary and Treasurer: W. W. Willoughby, Associate Professor of Political Science, Johns Hopkins University.

Executive Council: For a term of one year: Hon. Andrew D. White, Dr. Albert Shaw, Professor W. A. Schaper, Professor L. S. Rowe, Hon. Herbert Putnam (declined); for a term of two years: Professor J. A. Fairlie, Professor C. H. Huberich, Professor H. P. Judson, Professor Jesse Macy, and Professor Bernard Moses.

At a meeting of the Executive Council, held December 30, 1903, the following standing committees, with power to add new members, were appointed:

Committee on Arrangements of Annual Meeting—

H. P. Judson, Prof. Polt. Sci., Univ. of Chicago (Chairman).
F. J. Goodnow, Prof. Administrative Law, Columbia Univ.
W. W. Willoughby, Assoc. Prof. Polt. Sci., Johns Hopkins Univ.

Committee on Comparative Legislation—

R. H. Whitten, Legislative Lib'n, Univ. N. Y., Albany (Chairman).
Herbert Putnam, Librarian of Congress (declined).
Charles McCarthy, Legislative Librarian, Madison, Wis.
G. W. Scott, Chief of Law Division of Library of Congress (declined).

Committee on Comparative Jurisprudence—

Munroe Smith, Prof. Roman Law, Columbia Univ. (Chairman).
C. W. Needham, President Columbian University.
Ernst Freund, Prof. Administrative Law, Univ. of Chicago.

Committee on International Law and Diplomacy—

Theodore Woolsey, Prof. International Law, Yale University (Chairman).
J. H. Latané, Prof. History, Washington and Lee Univ.
J. B. Moore, Prof. International Law, Columbia Univ.
G. G. Wilson, Prof. International Law, Brown Univ.

Committee on Administration—

W. A. Schaper, Prof. Polt. Science, Univ. of Minn. (Chairman).
F. J. Goodnow, Prof. Administrative Law, Columbia Univ.
S. E. Sparling, Prof. Polt. Science, Univ. of Wisconsin.
J. A. Fairlie, Prof. Administrative Law, Univ. of Mich.
James T. Young, Prof. Polt. Science, Univ. of Pennsylvania.

Committee on Constitutional Law—

A. L. Lowell, Prof. Science of Government, Harvard Univ. (Chairman) declined.
Isidor Loeb, Prof. Politics, University of Missouri.
Nathan Abbott, Prof. of Law, Leland Stanford Jr. Univ. (declined).

Committee on Politics—

P. S. Reinsch, Prof. Polt. Sci., Univ. of Wis. (Chairman).
H. A. Garfield, Prof. Polt. Sci., Princeton Univ.
J. A. Woodburn, Prof. History and Politics, Univ. of Indiana.
J. W. Jenks, Prof. Polt. Economy & Politics, Cornell Univ.

Committee on Political Theory—

W. W. Willoughby, Asst. Prof. Polit. Science, Johns Hopkins Univ. (Chairman).
C. E. Merriam, Asst. Prof. Polt. Sci. Univ. of Chicago.
W. A. Dunning, Prof. of History, Columbia Univ.

Committee on Programme—

F. J. Goodnow, Prof. Administrative Law Columbia Univ. (Chairman).
W. W. Willoughby, Asst. Prof. Polt. Sci., Johns Hopkins Univ.
L. S. Rowe, Prof. Polt. Science, University of Pennsylvania.

Constitution of the American Political Science Association,

ADOPTED DECEMBER 30, 1903.

ARTICLE I.

NAME.

This Association shall be known as the American Political Science Association.

ARTICLE II.

OBJECT.

The encouragement of the scientific study of Politics, Public Law, Administration and Diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III.

MEMBERSHIP.

Any person may become a member of this Association upon payment of Three Dollars, and after the first year may continue such by paying an annual fee of Three Dollars. By a single payment of Fifty Dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV.

OFFICERS.

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually, and of an Executive Council, consisting *ex-officio* of the officers above mentioned and ten elected members, whose term of office shall be two years, except that of those selected at the first election, five shall serve for but one year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V.

DUTIES OF OFFICERS.

The President of the Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively upon the Vice-Presidents in the order of their election, upon the Secretary and the Treasurer.

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association, and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI.

RESOLUTIONS.

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII.

AMENDMENTS.

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

Officers of the Association for 1904

PRESIDENT.

FRANK J. GOODNOW.

FIRST VICE-PRESIDENT.

PAUL S. REINSCH.

SECOND VICE-PRESIDENT.

SIMEON E. BALDWIN.

SECRETARY AND TREASURER.

W. W. WILLOUGHBY.

EXECUTIVE COUNCIL.

Ex-officio.

The officers above named.

By Election.

J. A. FAIRLIE,
C. H. HUBERICH,
H. P. JUDSON,
JESSE MACY,
BERNARD MOSES,
L. S. ROWE,
W. A. SCHAPER,
ALBERT SHAW,
ANDREW D. WHITE.

List of Members.

Adams, Hon. H. C., Madison, Wis.
Ames, Charles H., 120 Boylston St., Boston, Mass.
Ashley, R. L., 730 W. 16th St., Los Angeles, California.
Babb, Hon. J. E., Lewiston, Idaho.
Baetjer, E. J., 206 N. Calvert St., Baltimore, Md.
Bagge, Gostat, Univ. of Upsala, Stockholm, Sweden.
* Baldwin, Hon. Simeon E., 69 Church St., New Haven Conn.
Barnard, Prof. James Lynn, Ursinus College, Collegeville, Pa.
Barstow, C. L., The Century Co., Union Square, New York City.
Barrett, Prof. R. C., Des Moines, Iowa.
Beddall, Marcus M., Dubuque, Iowa.
Benton, Prof. E. J., Adelbert College, Cleveland, Ohio.
* Bigelow, Poultney, Boston University, Boston, Mass.
Bondy, William, 149 Broadway, New York City.
Bowman, Prof. Harold M., Dartmouth College, Hanover, N. H.
Boyle, E. Mortimer, 179 W. 88th St., New York City.
Bradford, Gamaliel, Boston, Mass.
Braxton, A. C., Staunton, Va.
Brown, Hon. W. E., Rhinelander, Wis.
Bryan, Joseph, Richmond, Va.
* Buckler, Wm. H., 828 Equitable Bldg., Baltimore, Md.
Bullowa, F. E. M., 31 Nassau St., New York City.
Burnett, Prof. George R., Iowa State University, Iowa City, Ia.
Butler, John A., Milwaukee, Wis.
* Callahan, Prof. J. M., University of West Virginia, Morgantown, W. Va.
Cator, George, Maryland Club, Baltimore, Md.
Caldwell, Prof. H. W., University of Nebraska, Lincoln, Neb.
Chapin, Charles V., Providence, R. I.
Chapin, Prof. Robert Coit, Beloit College, Beloit, Wis.
Clark, Charles A., 800 First Ave., Cedar Rapids, Iowa.

* Life Member.

Clark, Prof. W. E., College of the City of New York, New York City.
Cleveland, F. A., 30 Broad St., New York City.
Clow, Prof. Fred. R., State Normal School, Oshkosh, Wis.
Colby, Prof. James, Dartmouth College, Hanover, N. H.
Cole, T. L. 13 Corcoran Bldg., Washington, D. C.
Cook, Prof. W. W., University of Missouri, Columbia, Mo.
Coudert, Frederick R., 71 Broadway, New York City.
Crane, R. T., Johns Hopkins University, Baltimore, Md.
Creagh, Prof. John T., Catholic Univ. of America, Washington, D. C.
Daish, John Broughton, Washington, D. C.
Davis, John, 515 Cass Ave., Detroit, Mich.
Dawkins, Walter I., 408 Fidelity Bldg., Baltimore, Md.
Dealey, Prof. J. A., Brown University, Providence, R. I.
Deemer, Judge Horace E., Des Moines, Iowa.
Dern, George H., P. O. Box 348, Salt Lake City, Utah.
Dennis, Prof. Alfred P., Smith College, Northampton, Mass.
Dodd, W. F., 211 A St., S. E., Washington, D. C.
Duniway, Prof. C. A., Leland Stanford University, California.
Dunlap, Prof. Boutwell, Catholic University, Washington, D. C.
Dunning, Prof. Wm. A., Columbia University, New York City.
Eames, Burton E., 113 Devonshire St., Boston, Mass.
Edmonds, Prof. F. S., Central High School, Philadelphia, Pa.
Egleston, Melville, 26 Cortland St., New York City.
Elliott, Prof. E. G., Princeton University, Princeton, N. J.
Erickson, Hon. Halford, Madison, Wis.
Fairlie, Prof. John A., 524 S. State St., Ann Arbor, Mich.
Falkner, Roland Post, San Juan, Porto Rico.
Farnam, Henry Walcott, 43 Hillhouse Ave., New Haven, Conn.
Farrand, Prof. Max, Leland Stanford University, California.
Faulkner, C. E., Minneapolis, Minn.
* Ferguson, Prof. Henry, Trinity College, Hartford, Conn.
Finley, President J. H., College of the City of New York, N. Y. City.
Ficklen, Prof. John R., Tulane University, New Orleans, La.
Fischer, W. J., 615 Hammond Bldg., Detroit, Mich.
Fisk, Prof. George M., University of Illinois, Urbana, Ill.
Foote, Allen R., Home Insurance Building, Chicago, Ill.
Ford, Henry J., Pittsburgh Gazette, Pittsburgh, Pa.
Ford, Worthington C., Library of Congress, Washington, D. C.
Freund, Prof. Ernst, University of Chicago, Chicago, Ill.
Gannaway, Prof. John W., Univ. of Wisconsin, Madison, Wis.
Gardiner, Rathbone, Providence, R. I.
Gardner, Prof. Henry B., 54 Stimson Ave., Providence, R. I.

Garfield, Prof. H. A., Princeton University, Princeton, N. J.
Garner, Prof. J. W., University of Illinois, Urbana, Ill.
Garrett, Robert, 7 South St., Baltimore, Md.
Garrison, Prof. G. P., University of Texas, Austin, Texas.
Garver, Prof. F. H., Morningside College, Sioux City, Iowa.
Glasson, Prof. Wm. H., Trinity College, Durham, N. C.
* Goodnow, Prof. Frank J., Columbia University, N. Y. City.
Gould, Dr. E. R. L., 281 Fourth Ave., New York City.
Gray, Prof. J. H., Northwestern University, Evanston, Ill.
Grosvenor, Prof. E. A., Amherst College, Amherst, Mass.
Hadden, Prof. F. H., University of Kansas, Lawrence, Kans.
Hammond, John H., 30 Broad St., New York City.
Hart, Prof. A. B., Harvard University, Cambridge, Mass.
Harding, Prof. A. S., South Dakota Agricultural College, Brookings, S. D.
Haskins, Prof. C. H., 15 Prescott Hall, Cambridge, Mass.
Hatten, W. H., New London, Wisconsin.
Hatton, Prof. A. R., University of Chicago, Chicago, Ill.
Haynes, Prof. George H., Worcester Polytechnic Institute, Worcester, Mass.
Hazard, President Caroline, Wellesley College, Wellesley, Mass.
Hebberd, Robert W., N. Y. State Board of Charities, Albany, N. Y.
Hepburn, A. B., 83 Cedar St., New York City.
Hershey, Prof. A. S., Indiana State Univ., Bloomington, Ind.
Holt, Henry, 29 W. 27th St., New York City.
Horack, Prof. F. E., Univ. of Iowa, Iowa City, Ia.
Horwood, H. A., 272 Manhattan Ave., New York City.
Howard, Prof. B. E., Cambridge, Mass.
Howe, Hon. W. W., 3½ Carondelet St., New Orleans, La.
Huberich, Prof. C. H., University of Texas, Austin, Texas.
Hudson, Gardner K., Fitchburg, Mass.
Hull, Prof. C. H., Cornell University, Ithaca, N. Y.
* Iles, George, Park Avenue Hotel, New York City.
Jenks, Prof. J. W., Cornell University, Ithaca, N. Y.
Johns Hopkins University Library, Baltimore, Md.
Johnson, Prof. Allen, Iowa College, Grinnell, Iowa.
Johnson, Prof. E. H., Emory College, Oxford, Ga.
Johnston, John, Marine National Bank, Milwaukee, Wis.
Judson, F. N., 500-506 Rialto Bldg., St. Louis, Mo.
Keasbey, Prof. L. M., Bryn Mawr College, Bryn Mawr, Pa.
Kellogg, Charles P., Waterbury, Conn.
Knapp, Martin A., Interstate Commerce Commission, Washington, D. C.
Kuhn, Arthur K., 8 Rue Laurent Pichot, Paris, France.

Lacy, B. W., Dubuque, Iowa.
Latané, Prof. J. H., Washington and Lee University, Lexington, Va.
Loeb, Prof. Isador, University of Missouri, Columbia, Mo.
Logan, Walter S., 27 William St., New York City.
Loos, Prof. I. A., State University of Iowa, Iowa City, Iowa.
Low, A. Maurice, 1410 G. St., Washington, D. C.
Lowell, Prof. A. Lawrence, Harvard University, Cambridge, Mass.
McCarthy, Charles, Madison, Wis.
MacDonald, Prof. Wm., Brown University, Providence, R. I.
McKechan, Charles L., 711 Bullitt Bldg., Philadelphia, Pa.
McKuban, J. P., Dickinson School of Law, Carlisle, Pa.
MacLean, Prof. J. A., University of Idaho, Moscow, Idaho.
McNulty, Prof. John J., College of the City of New York, N. Y. City.
McPherson, Logan G., 71 Broadway, New York City.
Macy, Prof. Jesse, Iowa College, Grinnell, Iowa.
Maltbie, Milo Roy, 52 Williams St., New York City.
* Marburg, Theodore, 14 W. Mt. Vernon Place, Baltimore, Md.
Martin, John, Stapleton, N. Y.
Mather, Prof. Samuel, Western Reserve University, Cleveland, Ohio.
Mechern, F. R., 5828 Woodlawn Avenue, Chicago, Ill.
Mercer, H. V., Minneapolis, Minn.
Merriam, Prof. C. E., University of Chicago, Chicago, Ill.
Minor, Prof. Raleigh, University of Virginia, Charlottesville, Va.
Moore, Hon. John Bassett, Columbia University, N. Y. City.
Moran, Prof. T. F., Purdue University, Lafayette, Ind.
Morey, Prof. Wm. C., Rochester University, Rochester, N. Y.
Morris, Henry C., 188 Madison St., Chicago, Ill.
Moses, Prof. Bernard, University of California, Berkeley, Cal.
Mulkey, Frederick W., Mulkey Block, Portland, Oregon.
Needham, President C. W., George Washington University, Washington, D. C.
Nelson, Prof. H. L., Williams College, Williamstown, Mass.
Newcomb, Harry T., Bond Bldg., Washington, D. C.
Nicholson, Edward K., Sanford Bldg., Bridgeport, Conn.
Niles, Alfred S., Herald Bldg., Baltimore, Md.
Norton, Prof. J. P., 563 Orange St., New Haven, Conn.
Outerbridge, A. E., 1600 Hamilton St., Philadelphia, Pa.
Parker, Hon. F. W., Hotel Del Prado, Chicago, Ill.
Parkinson, Prof. J. B., Madison, Wis.
Parsons, Samuel J., 135 E. 15th St., New York City.

Peterson, Prof. Samuel, University of Texas, Austin, Texas.
Plum, Prof. H. G., University of Iowa, Iowa City, Iowa.
Prescott, A. T., Baton Rouge, La.
Reeves, Jesse S., Richmond, Ind.
Reinsch, Prof. Paul S., University of Wisconsin, Madison, Wis.
Rodenbeck, Hon. W. J., Rochester, N. Y.
Ripton, Prof. B. H., Union College, Schenectady, N. Y.
Robinson, Prof. M. H., University of Illinois, Urbana, Ill.
Rose, John C., 628 Equitable Bldg., Baltimore, Md.
Rowe, Prof. L. S., Univ. of Pennsylvania, Philadelphia, Pa.
Rudd, Prof. Channing, George Washington Univ., Washington, D. C.
Rutter, Frank R., Dep't of Agriculture, Washington, D. C.
Sanborn, J. B., Madison, Wis.
Schaper, Prof. W. A., Univ. of Minnesota, Minneapolis, Minn.
Schouler, Dr. James, 60 Congress St., Boston, Mass.
Scott, G. W., Library of Congress, Washington, D. C.
Scott, Prof. J. B., Columbia University, New York City.
Scovel, Prof. Sylvester F., Wooster, Ohio.
Seager, Prof. H. R., Columbia University, New York City.
Seligman, Prof. E. R. A., Columbia University, N. Y. City.
Shambaugh, Prof. B. F., State University, Iowa City, Iowa.
Shaw, Albert, 13 Astor Place, New York City.
Sharp, Judge G. M., 2105 St. Paul St., Baltimore, Md.
Shepard, Edward M., 26 Liberty St., New York City.
Siebert, Prof. W. H., 201 W. 10th Ave., Columbus, Ohio.
Sioussat, Prof. St. George L., University of the South, Sewanee, Tenn.
Sites, Prof. C. M. Lacey, Nanyang, Shanghai, China.
Smalley, Prof. H. S., Univ. of Michigan, Ann Arbor, Mich.
Smith, Howard, 222 Langdon St., Madison, Wis.
Smith, Prof. Munroe, Columbia University, New York City.
Sparling, Prof. S. E., Univ. of Wis., Madison, Wis.
Speranza, Gino C., Bowling Green Bldg., New York City.
Stanclift, Prof. H. C., Cornell College, Mt. Vernon, Iowa.
Stevens, Hon. E. Roy, Madison, Wis.
Stirling, Prof. Thomas, Law Dep't State University, Vermillion, South Dakota.
Stockbridge, Hon. Henry, Law Bldg., Baltimore, Md.
Strong, Rev. Dr. Josiah, New York City.
Sullivan, Prof. James, 308 W. 97th St., New York City.
Tarrant, Hon. W. D., Court House, Milwaukee, Wis.
Teele, R. P., Department of Agriculture, Washington, D. C.
Tooke, Charles W., 12 Syracuse Bank Bldg., Syracuse, N. Y.
Ufford, W. S., 301 N. Charles St., Baltimore, Md.

Vilas, Charles A., Wells Bldg., Milwaukee, Wis.
Vincent, Prof. J. M., Johns Hopkins University, Baltimore, Md.
Walling, W. E., University Settlement, 184 Eldridge St., New York City.
Wang, Mr. Chung Hin, 126 Howe St., New Haven, Conn.
Washburn, R. W., Worcester, Mass.
Weinzirl, Prof. John, University of New Mexico, Albuquerque, N. M.
West, Prof. Max, Dep't Commerce and Labor, Washington, D. C.
White, J. LeRoy, 2400 W. North Ave., Baltimore, Md.
White, Hon. Peter, Marquette, Mich.
Whitten, R. H., State Library, Albany, N. Y.
Wigmore, Prof. John H., Law School, Northwestern University, Chicago, Ill.
Willcox, David, Delaware & Hudson R. R. Co., New York City.
Willoughby, Hon. Wm. F., San Juan, Porto Rico.
* Willoughby, Prof. W. W., Johns Hopkins University, Baltimore, Md.
Wilson, President Woodrow, Princeton University, Princeton, N. J.
Wilson, Prof. G. G., Brown University, Providence, R. I.
Wood, Stuart, 400 Chestnut St., Philadelphia, Pa.
Woodburn, Prof. J. A., Indiana State Univ., Bloomington, Ind.
Woodruff, Hon. C. R., 707 North American Bldg., Phila., Pa.
Woolsey, Prof. T. S., Yale Univ., New Haven, Conn.
Woolworth, Hon. James Mills, Omaha, Neb.
Young, Prof. Allyn, A., Adelbert College, Cleveland, Ohio.
Young, Prof. J. T., University of Pennsylvania, Philadelphia, Pa.

SUMMARY OF MEMBERSHIP—DECEMBER 31, 1904.

Life members	9
Annual members	205
Total	214

PROGRAMME

OF THE

FIRST ANNUAL MEETING

OF THE

American Political Science Association,

HELD IN CHICAGO, DECEMBER 28-30, 1904.

WEDNESDAY, DECEMBER 28, 10.30 A. M. *Mandel Hall, University of Chicago.*

Joint Session with the American Historical Association.

Address of Welcome by President Harper.

The Work of the Amercan Political Science Association, by the President of the Association, Prof. Frank J. Goodnow, Columbia University.

The Contrast of Political Theory and Practice in France under the Convention, by Prof. Wm. M. Sloane, Columbia University.

The Relations of the Legislative to the Executive Power, by Prof. James T. Young, Director of the Wharton School of Finance, University of Pennsylvania.*

The Napoleonic Confederacy in the United States, by Dr. Jesse S. Reeves, of Richmond, Ind.

WEDNESDAY, DECEMBER 28, 2 P. M. *Mandel Hall, University of Chicago.*

General Topic: International Law.

The Beginnings of War, by Prof. Theodore S. Woolsey, Yale University.

Unneutral Service, by Prof. G. G. Wilson, Brown University.

Contraband of War, by Prof. Harry P. Judson, University of Chicago.

Discussion.

THURSDAY, DECEMBER 29, 10.30 A. M. *Northwestern University Building, Corner Lake and Dearborn Streets, Chicago.*

General Topic: Government of Colonies and Dependencies.

Colonial Policy, by Prof. Bernard Moses, University of California.†

Colonial Autonomy, by Prof. Paul S. Reinsch, University of Wisconsin.

Discussion.

* Prof. Young not being able to be present, his paper was read by title only.

† Prof. Moses not being able to be present, his paper was read by title only.

THURSDAY, DECEMBER 29, 2 P. M.

Theatre, Reynolds Club, University of Chicago.

General Topic: State and Local Government.

State Boards of Health, by Hon. Charles V. Chapin, Superintendent of Health, Providence, R. I.

State Supervision of Local Finance, by Prof. John A. Fairlie, University of Michigan.

The Reorganization of Local Government in Cuba, by Prof. Leo S. Rowe, University of Pennsylvania.

Discussion.

THURSDAY, DECEMBER 29, 8 P. M. *Reynolds Club, University of Chicago.*

Meetings of Standing Committees.

Comparative Legislation Committee: Brief reports from the Chairmen of sub-committees and general discussion of the purpose of the Committee.

FRIDAY, DECEMBER 30, 10.30 A. M.

Library, Reynolds Club, University of Chicago.

Joint Session with American Economic Association.

Governmental Interference with Industrial Combinations, by Hon. Edward B. Whitney, formerly Assistant Attorney-General of the United States.

The Regulation of Railway Rates, by Hon. Martin Knapp, Chairman of United States Inter-State Commerce Commission.

Tendencies in the Law of Taxation of Railways, by Prof. Henry C. Adams, University of Michigan.

These papers were separately discussed by persons assigned for the purpose by the American Economic Association.

FRIDAY, DECEMBER 30, 2.00 P. M. *Reynolds Club, University of Chicago.*

Business Meeting of the American Political Science Association.

Report of the Secretary for the Year 1904.

In pursuance of the authority given him by the Executive Council, the Secretary prepared and sent out to a selected list of persons the following letter of invitation to membership:

BALTIMORE, MD., JANUARY, 1904.

DEAR SIR:

As the result of a movement begun more than a year ago there has been established an *American Political Science Association,* the object of which is to advance the scientific study of Politics, Public Law, Administration and Diplomacy, by bringing into closer personal contact persons interested in this general field of thought, by encouraging research, by furnishing at its annual meetings opportunities for discussion, by aiding, to the extent of its financial ability, in the collection of valuable material, and by the publication of important papers. The Association will thus seek to do for Political Science a work similar to that now being done by the American Historical and American Economic Associations for History and Economics respectively. It will be the policy of this new Association to maintain as close and harmonious relations as possible with these two older associations, and, when possible, to hold its annual meetings at the same times and places.

In order to cover effectively the whole field of Political Science, the Association will distribute its work among sections, devoted respectively to such topics as International Law and Diplomacy, Comparative Legislation, Historical and Comparative Jurisprudence, Constitutional Law, Administration, Politics, and Political Theory.

It is desired to emphasize the fact that this Association has been established with the idea of interesting and securing the active co-operation not only of persons engaged in academic instruction, but of public administrators, lawyers of broader culture, and, in general, of all those interested in the scientific study

of the great and increasingly important questions of practical and theoretical politics in this country and abroad.

At the meeting at which the Association was established (New Orleans, La., December 30, 1903) the following officers were elected for the current year:

President, F. J. Goodnow, Professor of Administrative Law, Columbia University.

First Vice-President, ——— ———.

Second Vice-President, Paul S. Reinsch, Professor of Political Science, University of Wisconsin.

Third Vice-President, Hon. Simeon E. Baldwin, of New Haven, Conn.

Secretary and Treasurer, W. W. Willoughby, Associate Professor of Political Science, Johns Hopkins University.

Associated with these in the government of the association were elected the following members of the Executive Council:

Hon. Andrew D. White, former Ambassador to Germany; Jesse Macy, Professor of Political Science, Iowa College; H. P. Judson, Professor of Political Science, University of Chicago; L. S. Rowe, Professor of Political Science, University of Pennsylvania; Dr. Albert Shaw, Editor Review of Reviews; Bernard Moses, Professor of Political Science, University of California; J. A. Fairlie, Professor of Administrative Law, University of Michigan; W. A. Schaper, Professor of Political Science, University of Minnesota.

Article III. of the Constitution provides that "Any Person may become a member of this Association upon payment of three dollars, and after the first year may continue such by paying an annual fee of three dollars. By a single payment of fifty dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

This letter is sent to you as one thought likely to be interested in the work of the Association, and as such you are cordially invited to become one of its members.

Sincerely yours,

W. W. WILLOUGHBY,

Secretary American Political Science Association.

In response to this invitation, during the year, two hundred and fourteen persons became members of the Association. Of these nine became life members.

The first annual meeting of the Association was held in Chicago, December 28-30, 1904, upon the invitation of the University of Chicago and the Northwestern University. The programme of papers read and discussions had has been already set forth.

The following hospitalities were extended to the Association:

The courtesy of the Quadrangle Club, Fifty-Eighth street and Lexington avenue, and of the City Club, 178 East Madison street, was extended to non-resident members of the Association. The members of the associations, and ladies accompanying them, were invited to a luncheon in Hutchinson Hall, on Wednesday, at 1 p. m. The Chicago Historical Society offered a reception on Wednesday evening, after the conclusion of the exercises held in its hall. Besides the Society's permanent exhibit of interesting manuscripts relating to Western history, and a loan exhibit of similar character from the Jesuit College in Montreal, Mr. Edward E. Ayer offered an exhibition in the Society's rooms of specimens of his rare books, manuscripts and maps relating to the history of the Philippine Islands. President Harper invited the members and ladies accompanying them to a reception at his house, Fifty-Ninth street and Lexington avenue, on Thursday afternoon. On Thursday evening, after the conclusion of the exercises, there was a " smoker," for the gentlemen of the Association, during which the ladies were entertained by Mrs. Mary J. Wilmarth and Mrs. James Westfall Thompson, at the latter's residence, 5747 Washington avenue

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MEETINGS OF THE EXECUTIVE COUNCIL, DECEMBER 29, 1904.

At a meeting of the Executive Council, held December 29, 1904, at which Messrs. F. J. Goodnow, J. A. Fairlie, H. P. Judson, Jesse Macy, L. S. Rowe, W. A. Schaper, and W. W. Willoughby were present, the following business was transacted.

A committee, to be composed of the President and Secretary of the Association, was appointed to act in co-operation with similarly appointed representatives of the American Historical

and American Economic Associations upon the time and place of the next annual meeting, including the power to appoint the committee upon local arrangements.

A committee composed of Messrs. F. J. Goodnow, Robert H. Whitten, and W. W. Willoughby was appointed to consider the future policy of the Association in the matter of the publication by it of its annual proceedings, and of such other material as might be offered to it or prepared under its direction. It was, however, decided by the Council that for the year 1905 the Association should not attempt anything further than the publication, in bound form, of the proceedings of its annual meeting of December 28-30, 1904, which should include the printing *in extenso* of the papers read, and abstracts of the discussions had thereupon.

Messrs. L. S. Rowe and W. A. Schaper were appointed a committee to audit the accounts of the Treasurer.

Messrs. C. E. Merriam (Chairman), G. G. Wilson, and W. A. Schaper were appointed a committee, with power to add additional members, to undertake during the year 1905 the work of securing new members to the Association. Authority was given to this committee to expend such amounts as should be necessary for the prosecution of this work, such expenditures, however, to be previously sanctioned by the President and Treasurer of the Association.

In place of the "Standing Committees" appointed by the Executive Council December 31, 1903, the following "Sections" were created:

Comparative Legislation.
International Law and Diplomacy.
Public Administration.
Municipal Government.
Constitutional Law.
Colonies and Dependencies.
Political Parties.
Political Theory.
Instruction in Political Science.

The "Standing Committees" appointed December 31, 1903, were thereupon discharged, and the President of the Association authorized to appoint a chairman for each of the newly

created " Sections," each of such chairmen to be empowered to organize his respective section and to make such necessary expenditures as might be approved by the President and Treasurer of the Association. The President, in pursuance of the power thus given him, appointed the following chairmen:

J. W. Jenks, Comparative Legislation.
T. S. Woolsey, International Law and Diplomacy.
S. E. Sparling, Public Administration.
L. S. Rowe, Municipal Government.
Isidor Loeb, Constitutional Law.
Paul S. Reinsch, Colonies and Dependencies.
C. E. Merriam, Political Parties.
W. W. Willoughby, Political Theory.
W. A. Schaper, Instruction in Political Science.

BUSINESS MEETING OF THE ASSOCIATION, DECEMBER 30, 1904.

The meeting was called to order with President Goodnow in the chair.

The reports of the Secretary and Treasurer were read and approved. A resolution of thanks was unanimously adopted, expressing the appreciation of the Association for the courtesies and hospitalities extended it during its Chicago meeting. There was also unanimously adopted a resolution thanking the American Historical and the American Economic Associations for the hearty and generous manner in which they had received the newly established American Political Science Association into equal fellowship with themselves.

Upon the proposal of Mr. Whitten, chairman of the Committee on Comparative Legislation, the following resolution was adopted:

"WHEREAS, The increasing intimacy of social and commercial relations and the demand for accurate knowledge concerning the legislation and experience of the various states and of foreign countries renders highly important the more complete organization of the material of comparative legislation:

Resolved, That the American Political Science Association commends the project of the librarian of Congress for an index

of foreign legislation and urges upon Congress the importance of making adequate provision therefor.

Resolved, That the Association commends the work in comparative legislation now performed by various departments of the national government, notably the Department of Agriculture and the Department of Commerce and Labor, and urges the continuance and extension of this work so as to cover all subjects of legislation that come within the province of the various departments and bureaus."

The chair, upon motion, appointed Messrs. J. A. Woodburn, Robert H. Whitten, Isidor Loeb, S. E. Sparling and Ernst Freund a committee to make nominations for officers of the Association for the year 1905. This committee thereupon placed in nomination the following persons, all of whom were unanimously elected to the offices indicated.

President: Professor Frank J. Goodnow.

First Vice-president: Dr. Albert Shaw.

Second Vice-president: Professor J. W. Jenks.

Third Vice-president: Hon. F. N. Judson.

Secretary and Treasurer: Professor W. W. Willoughby.

Executive Council: Professors L. S. Rowe, W. A. Schaper, J. A. Woodburn, G. G. Wilson, P. S. Reinsch.

The Association then adjourned *sine die.*

W. W. WILLOUGHBY, *Secretary.*

Report of the Treasurer.

Receipts.

Fees, life membership	$400 00
Fees, life membership (partial payment)	15 00
Annual dues 1904	597 00
Annual dues 1905	6 00
Total receipts to December 30, 1904	$1018 00

Expenditures.

Printing circulars, programs, etc.	$141 40
Stationery	7 00
Postage	30 00
Typewriting	47 77
Cards and tray	6 03
Expressage, miscellaneous	19 90
Total	252 10
Balance on hand December 30, 1904	765 90
	$1018 00

Submitted December 30, 1904.

W. W. WILLOUGHBY.

Audited and found correct.

W. A. SCHAPER,

L. S. ROWE.

PAPERS AND DISCUSSIONS.

THE WORK OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION.

PRESIDENTIAL ADDRESS BY FRANK J. GOODNOW.

It is perhaps well that at the first public meeting of the American Political Science Association a statement be made as to its objects and purposes. It is proper also that this statement should be made by him who has been honored as its first President. For while what will be said is not exactly an official program of the work of the Association, at the same time it is, I trust, something more than a mere personal expression of the views of its president.

The statement which will be made on this occasion as to the purposes of the Association involves necessarily a consideration of the extent of the subject to the study of which the Association is devoted. It also offers a temptation to answer the question: What is Political Science? To this temptation I have determined not to yield. For it seems to me that such an attempt at definition is dangerous, particularly if it shall result in the endeavor to formulate a definition of Political Science which is at the same time inclusive and exclusive. Such an attempt is not only dangerous, but, even if successfully made, it is not in my opinion sufficiently fruitful of practical results to justify the expenditure of thought and time necessary to secure the desired end.

What I shall endeavor to do in what will be said to-day is therefore not to define political science or to show its relation to other sciences, but rather to enumerate some of the subjects which, because they have not been systematically treated by the other societies already in existence, should be chosen as the field of the American Political Science Association.

The matters which it is hoped thus to subject to more effective treatment than they have yet received at the hands of any American scientific association are those which intimately concern that political organization of society which is termed "the State." The State has been, of course, treated incidentally, by the American Historical Association. But members of that body have naturally been interested rather with the states of the past than those of the present, where their interest has been directed towards political matters at all. The functions of the State in the execution of its financial powers have also, at times, attracted the attention of members of the American Economic Association, but their interest has been mainly confined to the consideration of the economic expediency of certain kinds of taxes and the methods which have been adopted for securing their collection and disbursement. Other associations also have interested themselves in the consideration of specific political problems, such as civil service reform and the non-partisan government of municipalities, while still others have called attention, at their meetings and in their publications, to the political questions which, at the time, were agitating the public mind. While most of the associations whose aims have been at all political in character have busied themselves mainly with agitation for some particular reform, it cannot be denied that much work of scientific value has been done by the associations which are now, and for quite a time have been in the field. But it may perhaps be safely said that there was not, until the formation of the American Political Science Association, any association in this country which endeavored to assemble on a common ground those persons whose main interests were connected with the scientific study of the organization and functions of the State. It would seem, therefore, that there was room for the new Association which has been formed and which has met together for the first time for the discussion of some of the subjects, in the study of which its members are interested.

What, now, are those subjects? The answer to this question, when made by any single individual, must, of necessity, be colored somewhat by the special character of the work to

which he, in the main, devotes his attention, however much he may try to free himself from its somewhat narrowing influences.

Recognizing that what will be said is subject to this limitation, I shall endeavor to answer the question which has just been put, and, as a necessary consequence, endeavor to state what is the scope of the Political Science to which the Political Science Association should devote itself. As has been intimated, Political Science is that science which treats of the organization known as the State. It is at the same time, so to speak, a science of statics and a science of dynamics. It has to do with the State at rest and with the State in action. Inasmuch, however, as it is the State in action which causes the phenomena of the greatest practical concern to the individual, what will hereafter be said will be said from the point of view of the dynamics of Political Science. The State, as an object of scientific study, will be considered from the point of view of the various operations necessary to the realization of the State will.

In order that the State will may be realized in any concrete instance, it is necessary, first, that there be organs for the formulation of the State will; second, that that will be expressed; and, third, that the will, once expressed, shall be executed. Our subject naturally divides itself, therefore, into three pretty distinct parts, viz.:

1st, The expression of the State will;

2nd, The content of the State will as expressed, and

3rd, The execution of the State will.

In the first place, the State will must be expressed. In order that it shall be expressed, it is necessary that organs shall be established which are capable of action. The problems involved in determining what these organs shall be and how they shall act are of two kinds. They are, in the first place, theoretical or speculative in character, and they are, in the second place, legal or expressive of existing conditions. The theoretical problems have been mentioned first. For, however contemptuous may be one's belief in the practical value of the study of political theory, it is none the less true that every gov-

ernmental system is based on some more or less well defined political theory whose influence is often felt in minute details of governmental organization. The problems connected with the organization of the authorities which are to express the State will have to do naturally with the special disciplines to which the names of political theory and constitutional law have been attached. The subjects of political theory and constitutional law are, therefore, peculiarly subjects of political science to which any association devoted to the scientific study of Political Science should address itself. They are further, problems whose study has not attracted the serious and continuous attention of any organization or association.

But the problems of political theory, so far as that confines itself to the organization of the State and constitutional law do not, by any means, embrace all the problems arising in connection with the first branch of our subject. For the expression of the will of the State is in some cases directly facilitated by methods of procedure and by organizations which are not commonly regarded as parts of the political system. There are in all governmental systems extra-legal customs and extra-legal organizations whose influence must be considered if we are to obtain an idea of the actual political system of a country. Thus the British system of government is only imperfectly comprehended by one who confines his study to act of parliament and judicial decision. Only he can know what the British government is who in addition to the study of the law, takes up the study of parliamentary precedent; and thus comes to a realization of the real functions of the Cabinet, a body whose name is unknown to the law and whose composition is not even officially proclaimed.

The political system of the United States also offers abundant illustration of the necessity of considering extra-legal conditions. Thus, the real method of electing the President of the United States cannot be ascertained by a consideration of the provisions of the Constitution and the statutes of Congress relative to the matter. The habit, which has been developed, of regarding the presidential electors as mere instruments for the registration in legal form of decisions arrived at through

methods which are in large measure extra-legal, must be borne in mind if we would understand the real method of our presidential elections. Again, and in close connection with what has been said, we must endeavor to understand how the national parties are organized, how national conventions are formed and the methods of their action, if we are to understand the obligation which a presidential elector assumes when he accepts the nomination offered to him by the state convention of the party which he really represents.

In some instances organizations, which from most points of view are extra-legal, are given a standing within the law, as when the law provides, as it often does, that certain officers shall belong to the two leading political parties, or when the State puts on the official ballot the names of those persons which have been certified to its officers by the regular party conventions. In a few instances these parties are fully recognized by the law and their actions are regulated by statute and subjected to the control of the courts.

In all cases where the will of the State is actually influenced by such parties and naturally, particularly where such parties have secured legal recognition, the problems connected with their organization and the discharge by them of the functions for the discharge of which they were organized, are problems to which the attention of the Political Science Association should be directed.

Our political science has, therefore, to do, not only with the theoretical and legal problems of State organization, but also with the somewhat more practical and concrete problems of party organization, and nomination methods, whether these matters are regulated by law or not.

One of the peculiar developments of American political practice has been the attempt to separate both in organization and action the sovereign State from the government. The organization of the sovereign State we find provided for in constitutional conventions and plebiscites: its will is recorded in written constitutions and constitutional amendments. Important problems, both of a political and legal character, present themselves in connection with these subjects. Questions relating

to the legal standing of these conventions and the binding power of their enactments arise, the frequency increasing with the frequency of the actions of this character. Is a constitutional convention a representative of the sovereign people and are its enactments absolutely binding upon the courts, are questions which are not as yet answered, and to whose solution the Political Science Association may well be expected to contribute.

I have said that constitutional conventions and written constitutions are peculiar to American development. While this is true, it is also true that some European States have manifested a tendency somewhat akin to that to be noticed in the United States; while in America, not content with giving the sovereign people its opportunity to express its will on matters of fundamental importance, we have called upon it to act on many less important matters. We find here, as well as elsewhere, many instances of the referendum and initiative, both in state and in local affairs. These are subjects which should receive attention at our hands. For with the development of democracy they are becoming more and more important, and the questions connected with them are being solved in many cases, it seems to me, without sufficient intelligent consideration.

So far we have considered the questions of who shall express the State will and how shall that will be expressed. The second branch of the subject which demands attention is the content of the State will.

The content of the State will is usually regarded as the law.

Unless we conceive of all law as a part of Political Science, it becomes necessary then to differentiate Political Science from legal science. Strictly speaking, of course all law which does not affect the relations of the State and its officers is to be assigned to legal rather than to Political Science. For the science of the private law, *i. e.*, the law affecting the relations of private individuals one with another, is based upon social rather than political considerations. At the same time we must remember that the State, in either its central or local organization, is a subject of the private law, since it may enter

into almost all the relations into which a private individual may enter. Indeed, about the only relations into which a municipal corporation, *e. g.,* cannot, in the nature of things, enter, are the domestic relations. It is of course true, that the law affecting these so to speak private relations of the organs of the government, is somewhat modified because of the fact that the subject of these relations is possessed of the attributes of that elusive thing called sovereignty. But it is none the less true that a knowledge of the private law is necessary to one who would understand the methods and operations of what are known as political bodies. Furthermore, the points of contact between the private and the public law are so many and the contact is often so close that a knowledge of the private law is really necessary to one who would be a sound public lawyer. Thus, our constitution forbids a State to impair the obligation of a contract. To understand the meaning of this part of the constitution we must understand what is meant by the term "contract," which is usually regarded as a term of the private law. Again, the whole system of judicial remedies against illegal official action is in this country, because of the subjection of government officers to the law of the land, a part of the ordinary system of procedure open in the case of the violation of private rights to private individuals. A comprehension of this system of remedies is, therefore, impossible without a knowledge of what is usually spoken of as private law. Finally, many of the rules of private law are adopted largely because of their influence upon social and political conditions. Thus, the law of inheritance which prevails in a State, is adopted because some rather definite social purpose is sought to be subserved. Primogeniture is made the law of the State because of a desire to build up a class from whom political work is demanded. Thus, again, the law of contracts does not recognize as legal, certain agreements, such as those in restraint of trade, because they are not regarded as expedient from the political point of view. The law relating to labor cannot be understood without some knowledge of the private law.

For these reasons the American Political Science Associa-

tion has included among the subjects which are not foreign to it comparative legislation and historical and comparative jurisprudence, whether that legislation or jurisprudence is private or public. It will probably be true, however, that distinctly private legal subjects will not receive at our hands any very exhaustive treatment. For while the relations between public and private law are so intimate as to make it necessary that the public lawyer should have a knowledge of private law, it is none the less true that the public lawyer is interested only incidentally in distinctly private legal problems.

While this somewhat limited inclusion within the work of the association of private legal subjects demands an explanation, if not an apology, no such action on our part is necessary in the case of public legal subjects. Indeed, one of the most important objects of the association is just this study of the public law. The study of the public law is a particularly necessary part of Political Science. For, unless Political Science is to be regarded as a realm in which the political philosopher is to be permitted to roam at will, subject to no check on the exuberance of his fancy or caprice, the public law must be assigned a most important place in an association devoted to the study of Political Science. For it is only by a study of the law, sometimes a most detailed study, that we can arrive at an accurate idea of the form and methods of a governmental system. Indeed, it is very doubtful whether one can be a political scientist in any sense without a knowledge of the law governing the systems subject to study. There may be a class of political philosophers who are content to soar in the empyrean realms of speculation, but a political scientist who makes a study either of past or present governmental systems must of necessity know the law governing such systems. If it were not for the danger of offending some of those whose tastes lead them to philosophical speculation on things political, I should be inclined to say that the more public law a man knows, the more nearly does he approach the position of the political scientist, the more does he recede from that of the mere political philosopher.

In laying this emphasis upon the necessity of the study of

public law for the political scientist, I would not be regarded as depreciating the importance of the work of the theorist. Without him progress would be impossible; without him the public lawyer becomes a mere slave of precedent. Our study of the public law should therefore embrace a study of what it is, and what it should be.

It has been said that Political Science has to do with the execution of the State will, once it has been expressed. The subject of the execution of the State will, or the enforcement of law is one which, it seems to me, has never been accorded the importance which it deserves. Inasmuch as my work has been largely along the line of administrative law, which concerns itself particularly with the enforcement of law, it may well be that I approach this subject with somewhat of a bias. Nevertheless, I cannot let this opportunity pass without attempting to emphasize the importance of the ascertainment and application of correct principles of administration. I can not accept the truth of the saying,

> For forms of government let fools contest;
> That which is best administered is best,

for there is no one who has endeavored to secure some change in existing governmental organization who has not had this couplet thrown in his face so often that he has come to regard its use as an evidence of an absolutely hopeless condition of mind in the one who uses it A study of government which excludes the consideration of the administrative system and actual administrative methods is as liable to lead to error as the speculations of a political theorist which have no regard for the principles of public law.

What has been said requires, perhaps, the support of concrete example. The most famous of such examples that can be adduced is probably to be found in the condition of England just before the adoption of the Poor Law Amendment Act of 1834. The way in which the poor law had been administered was such that social conditions were deplorable. The cause of the trouble was found in the methods which had been provided for the administration of the law. For after the passage of the Poor Law Amendment Act although almost the

only changes introduced by that act were administrative in character, the conditions immediately improved. This improvement has, under the operation of the administrative principle at the basis of the Act, been almost steadily maintained up to the present day.

What was true of the Poor Law in England at the beginning of the nineteenth century is true of almost all branches of administration in this country at the present day. Where they are ineffective this ineffectiveness is in most cases due to the adoption of improper administrative methods. On this account the study of administration is of the greatest importance. But such a study cannot be made without a detailed study of administrative methods and their results. A detailed knowledge of fact and law is necessary to the proper understanding of even important administrative problems. The material to be examined, however, is so vast in extent and in large degree so inaccessible in character, that one hesitates to begin work, and shrinks in dismay at the magnitude of the task involved. While this is true in a measure of all countries, except those like Great Britain, where the material at any rate is in pretty good shape, it is particularly true of a country like the United States where over forty-five legislatures and supreme courts and thousands of administrative authorities are steadily at work increasing the amount of material to be examined; where, until a very recent time it could not be said, if even it can be said now, that the importance of the subject has been recognized, and where, as a consequence, the material to be examined has not been generally collected nor digested. When we approach the study of problems connected with municipal administration, we find conditions are even worse than those which have been described. For the fact that cities have been so long chartered by special legislative act and the almost complete absence of all city reports to State officers have made the collection of material on specific municipal problems a work before whose difficulty one simply stands in a state of almost mental paralysis.

The lack of a great deal of what might be called official material, it has been attempted to supply by the work of volun-

tary associations of persons engaged in the study of some particular class of administrative problems, which, like the Annual Conferences on Charities and Corrections and the State Charities Aid Associations, have already done valuable work. But the amount of the work done in this manner is but a drop in the bucket, while its character has, it is believed, suffered somewhat as a result of the narrowness of purpose of those engaged in it. A most important work for this association to take up would seem to be, therefore, the indexing and if possible the digesting of the material of the character described, already in existence, and the co-ordination of the activities of the various agencies now at work. Much might be done, it is believed, by suggestion to the State and Federal bureaus whose work is the gathering and circulation of information on topics of interest to those engaged in the study of Political Science. It is true that such work has no very dramatic character. It will not attract much attention nor excite extended comment. It will, nevertheless, be of the greatest value to the student, and will, even if tolerably done, have amply justified the addition of the American Political Science Association to the already long list of societies now in existence.

But, finally, whatever may be the work of a tangible and measurable sort which has been so imperfectly outlined, that the association may do, its annual sessions will offer a common meeting ground in more ways than one for those whose work is mainly or largely political rather than economic or historical. It is particularly desirable that there shall be an opportunity for those whose work savors somewhat of the closet to meet those engaged in the active walks of political life. For whatever may be the advantages of the life of the closet philosopher in securing the attainment of and adherence to lofty ideals, it can hardly be denied that a too great separation from the world of action is apt to conduce to the adoption of impracticable and unworkable methods. On the other hand, the man of action, particularly in the field of politics, is apt to acquire distorted views as a result of seeing his problems from too close a view-point, and often loses his ideals in his desire to attain his immediate object. The wise politician should

strive to secure the best that is attainable. Now the knowledge of what is the best attainable is possible only to him who has both ideals and practical political experience. It would seem, therefore, that the meetings of the Association where it is hoped the ideal and the practical may meet ought to be of benefit to both those classes to whom our political progress must be due.

The meetings of this Association ought also to have the greatest value to those of us who are engaged in the work of teaching. For only by personal contact with colaborers in the broad field we are essaying to cultivate, can we learn what is being done at other institutions than the one in which we have the privilege of working. Only by comparison of notes with our colleagues can we learn whether we can improve our methods. Only in this way can we rub away the prejudices and lose the narrowness resulting from our environment. Only in this way can we secure the inspiration which is consequent upon the comradeship and good fellowship of those engaged along the same lines of work. There is hardly one of us who is engaged in the work of instruction who does not feel a sense of loneliness, thrown, as we are, in our different intellectual homes in the companionship of those, who, in their enthusiasm for their own line of work, are prone to imagine we are engaged in the study of a vain thing. There is none of us, I am sure, who did not feel that the establishment of the American Political Science Association offered us an advantage which we had long envied the historian and the economist.

For these reasons it is believed that our new Association has opened to it a field which ought to be cultivated and offers opportunities which ought to be availed of, both by those engaged in the work of instruction in political science and by those who are more immediately responsible for the solution of the many pressing political problems of the day.

THE RELATION OF THE EXECUTIVE TO THE LEGISLATIVE POWER.

JAMES T. YOUNG.

Twenty years ago the author of "Congressional Government" declared that all the checks and balances of our political system had failed to preserve the balance of power between the three departments of government, and that the result was Congressional supremacy. To-day we must admit that these checks and balances are still unavailing but that we now live under a system of executive supremacy. Is this change due chiefly to factors of personality or does it correspond to new conditions in the social and economic life of the people? Is executive supremacy to be explained away by reciting the names—Cleveland, Harrison, McKinley, Roosevelt—or has something far more fundamental than a mere growth of personal influence taken place? Certainly the latter is true.

Aside from the element of personality, four important causes have tended to produce the changed relations between executive and legislature:

I. The growth in volume of government business.

II. The rise of new public questions of a technical character.

III. The popular demand for greater speed in government action.

IV. The growing unwieldiness of large legislative bodies.

I. Growth of the Volume of Public Business. The present volume of governmental affairs is not explained by the necessary increase of population, the extension of the national boundaries or the development of new sections of the country. While these have added their share, the great majority of governmental tasks have been occasioned by the development of the manufacturing and transportation interests of the country. This development has of necessity brought with it a division into separate, distinct economic classes and interests. The existence of these distinct groups has created two sets of demands, one for government action favorable to the group interests, the other for government regulation and restriction or

supervision of the activities of the group. From both sides our governments are assailed with requests for action. With each step forward in the development of these industries and with each attempt on their part to secure a more profitable adjustment of their internal organization, some new form of public regulation or supervision is invoked and from this a marked increase of the volume of government business arises. The recent report of the Chief of the Bureau of Corporations in the Department of Commerce and Labor affords a notable instance of this process. In 1887 it was felt that the trusts were the result of railroad rebates. The Interstate Commerce Law of that year arose from this belief. In 1890 industrial combination had reached a point where it could supposedly be reached by a law prohibiting restraint of interstate trade. The Sherman Act resulted. In 1903 it was believed that the evils of over-capitalization might be reached by publicity and the government jurisdiction was again extended. In 1904 the Bureau established to secure publicity advocates the licensing of corporations engaged in interstate commerce and this brings into the forum of public discussion the question of the further extension of government regulation. As a result of these and similar extensions of government power each Congress is now burdened with over 20,000 bills and resolutions. In the great volume of matters brought to its attention the legislative assembly cannot regulate in detail but is forced to enact outline laws, leaving to the executive the duty of filling in these outlines by regulations, orders and rules. The administrative side of the government is thereby charged with the duty of determining the content and the spirit of legislation within certain general limits.

II. It has become a platitude to say that modern business is more complex than formerly. This trite saying is particularly true of governmental affairs. The problems which we now face do not admit of settlement by a popular vote. The standard of intelligence of our citizenship is doubtless rising, yet the voter is not capable of working out a plan of government regulation or control.

The location of an Isthmian Canal, the reorganization of

the army, the construction of a navy, the more rational development of our postal facilities, the planning of systems of irrigation, the regulation of corporate finance, the control of railway rates and the management of our colonial dependencies are national questions of prime importance; but their settlement cannot depend upon a simple consensus of public opinion. They require rather the careful study of trained specialists and experts. If we examine the public problems brought up for discussion in the President's message it will be seen that they are pre-eminently industrial or commercial in character and that they are technical rather than popular. The numbers and importance of this class of public problems are growing by leaps and bounds,—a fact which necessarily brings into greater prominence the executive as the expert branch of the government.

III. The demand for quick government. One feature of our economic conditions that has largely escaped the attention of publicists, is the influence of means of communication upon government. This influence is indirect but none the less powerful in its action. Better means of transport and communication not only create a general quickening in the pace of commerce and manufactures; they also involve a subtler change in the psychology of the people. Our interests and our mental processes are reaching out beyond the narrower local environment and are becoming national and even cosmopolitan in scope. But by this same fact they move more quickly. We are intolerant of delay in business or government. The continued outcropping of lynch law in advanced communities is not always a sign of simple mob lawlessness but is frequently an expression of our whole attitude towards the action of the State. Doubtless it were better that more deliberation might sometimes be exercised in public affairs; but such is not the view of the people at large. Therefore the government must act and act quickly. But our legislative machinery was deliberately planned to secure slow action, while the executive is lightning-like in its swiftness. For illustration, a change in the method of interpreting and administering our immigration laws involves a newspaper article pointing to an evil in

the present system, an official investigation lasting about three days, a report, and finally a telegram of instructions from Washington to San Francisco, New York or Philadelphia. A change in the laws themselves, on the contrary, requires the formation of a strong public sentiment, a session, two sessions or several years spent in compromises, amendments and discussion, and finally the passage of the bill in an amended or weakened form. Administrative action by its very quickness carries with it something of the arbitrary; certainly it is capable of serious abuse if not exercised with care, but in the main it satisfies the demands of the time and is growing rapidly in popular favor. This fact strikes us most forcibly in the national government because the centralization of power there is more impressive, but the principle holds equally true of our cities. With the construction of every trolley-line and the elevation of every telephone or telegraph wire the possibility of, and the popular demand for the swifter exercise of municipal authority is increased. Even in our commonwealths, the number of problems which cannot await the more leisurely treatment of the legislative assembly, but must be solved from day to day, is becoming so large as to occasion a shifting of power to the administrative officials. In leaving the discussion of this point it should be noted that a larger amount of human energy and attention is constantly being devoted to time-saving devices of all kinds. The demand for speed feeds upon itself and the influence of this demand upon the relative positions of the legislative and executive departments may apparently be even stronger in the future than at present.

IV. At first glance it might seem that the greater size of our legislatures is a natural compensation for the increase in the public business; with more work to do we have more legislators to do it and the possibility of a greater division of labor. But larger numbers in a legislative assembly mean slower procedure and greater difficulty in transacting business. With each addition to our City Councils, State Legislatures and National Congress, the unwieldiness of those bodies becomes more apparent and the possibility of maintaining the present forms

of legislation more difficult. So our National House of Representatives has 386 members, the lower house of the State Legislature of New York 150, of Pennsylvania 204, of Massachusetts 221, of Connecticut 255; the Board of Aldermen of New York City has 73 members; the Common Council of Philadelphia 115, the Chicago Council 70, etc.

All of these bodies were originally organized with reasonable numbers, but by the increase of population and territory have become enlarged far beyond the necessities of the case. There is no satisfactory reason why a city legislative body should be encumbered with more than thirty members; it cannot be contended that such a number is required to represent the various localities in the city nor that any more accurate representation of the popular will results from the larger body. The state and national bodies are proportionally excessive in size. In order to remedy this an effort has been made to diminish the independence of the individual member and render him subordinate to the party leader. Session after session the individual member revolts against the arbitrary rules of the leaders, but without avail; the rules are necessary to secure the transaction of legislative business.

In spite of all this oppressive procedure, however, the difficulty of securing rapid legislative action is still so great that the program of a session usually includes few measures of general importance.

Closely connected with the cumbersomeness of our legislative assemblies is the confusing, complicated, indefinite and uninteresting character of their proceedings. The public mind cannot be aroused and held by the Congress as it can by the President. The acts of the executive have all that clear, sharp definiteness and point which attach to the doings of an individual, whereas an assembly proposes, refers, debates, amends and approves a measure only to pass it on to the other house.

Finally, it is not the mere slowness of action which has robbed the legislature of popular interest, but rather the growing consciousness of loss of popular control over the immediate acts of that body. The proceedings no longer represent

with reasonable accuracy the feelings of the people. The debates of half a session are sometimes made to deal with measures of secondary importance, while the leaders are busily preparing the real program. When this is ready the stage is reset, the old, time-consuming bills are unceremoniously whisked out of the way, and the pre-concerted measures are then attempted to be rushed through with the severest limitations of debate. Not only the slowness but the cumbersome indirectness of Congressional activity is the result of large numbers.

These four causes, rather than the particular personality of the administrative chief, have called forth the system of executive supremacy. In the last analysis Congress and the President are keen competitors for the interest, the enthusiasm and the sympathetic approval of the people. In that earliest epoch of our national history when the minds of men were governed by the remembrance of former tyranny and the fear of a new despotism, it was natural and inevitable that Americans should look to Congress for the protection of their liberties and the expression of their political beliefs. At that stage of the competition Congress, as the possessor of the qualities of deliberation, traditional jealousy of the executive and habitual care of the rights of the people, certainly deserved and received the first place in the confidence of the citizenship. But at present with the advent of the new conditions already outlined it would be strange indeed if the President were not awarded this preferment. The executive office stands emphatically for those qualities and characteristics which we now consider as typically American—efficient, purposeful, definite, quick action.

With this shifting of the relations between the two departments of government there arises a series of important problems which will have to be faced if executive supremacy is to be continued as a feasible and satisfactory system of government. The first of these is the adjustment of the legal relations between the two departments. At present the legislative leadership of the administrator must be exercised through devious and indirect channels. The annual message is of insignificant value in this respect. It must be supplemented by the drafting of bills in the various administrative departments and the

introduction of these bills through legislators friendly to the administration. The executive officers must appear before legislative committees and use what influence they can to secure favorable action by these committees. The chief executive must form the personal and political friendship which will advance the legislative measures for which his administration stands, and to this end he must use his various powers and prerogatives. He must strive to create within the legislative body, by all of these indirect means, a sentiment of respect for the prestige of the administration. In short, the American President has all of the work which the British Prime Minister and the Cabinet perform, but he is at present subject to all the hindrances of a system calculated on the needs of the eighteenth century. To do away with these anomalous and obstructive legal conditions is the problem of the immediate future.

In the second place, there is the need of some system of administrative courts to protect the citizen from the arbitrary action of subordinate officials. If government regulation is to be extended with each step forward in our industrial and commercial development, there will be opened up an immense field of supervision, inspection, regulation and control, bringing the public official into close contact with the citizen in a thousand different ways. To increase the points of contact without increasing the friction is a difficult and delicate task. We already need judges trained in the distinctively administrative questions of government who can, by a speedy and inexpensive procedure, decide on points of dispute between administrator and citizen in such a way as to maintain the efficiency of the government and safeguard the rights of the individual.

Lastly, executive supremacy gives rise to the need of a closer and more sympathetic touch between the Chief Administrator and the people. This can hardly be done by the adoption of Constitutional or legal provisions. It is a question which the people themselves must solve. There would seem to be but one feasible means of doing so, i. e., the extension of those great voluntary civic associations of a quasi-public nature which aim to bring to the attention of the government official

the needs of the people and their views upon public acts. In that part of our governmental system in which the executive is most prominent, namely, in our city governments, the role of these associations has been wonderfully enlarged within the last two decades, and as we in our national political institutions come to rely more and more upon the one-man power we must aim to strengthen and enlarge the scope of these great civic societies in the national field.

THE BEGINNINGS OF WAR.

THEODORE S. WOOLSEY.

The topic for discussion given me by our Executive Committee was originally, as printed in our programme, "What Constitutes a Declaration of War," suggested doubtless by the early stages of the present war in the East. But as full liberty was granted to alter this subject, I shall somewhat broaden my title and ask your attention to those steps, diplomatic and then forcible, which close negotiations and begin hostilities and which may perhaps properly be summed up under the caption "The Beginnings of War." Of these steps a Declaration of War may or may not be one.

Here lie two main topics or lines of inquiry:

(1) At what point in the discussion of a serious international question will a resort to violence be the natural next step and not a treacherous act?

(2) From what moment does a war date?

If it were necessary, or even customary that a formal declaration of intent to make war beginning at a set time, should precede hostilities, neither of these inquiries would be needful. Perhaps such a rule is desirable. The whistle of the referee is at once a fair warning and marks a fixed moment. It legalizes the beginning of violence. But although war is called a game and has highly conventionalized rules, it is a game without a referee. The whistle must be blown by the disputants, not by a third party. And if there is no whistle—no declaration—we must try to find an equivalent for it, a di-

plomatic status which means the same thing; which is so fair a warning as to preclude the charge of treachery if violence follows, for no state would be thought willing to attack another out of a clear sky.

The interval between peace and war is not measurable time; it is rather the process of balancing national desires, passions, fears, susceptibilities, until some consideration, light as air perhaps, turns the scale. The change from peace to war then is primarily a mental change, a matter of intention. But mental attitudes are not patent, while facts are; war may be a logical conclusion yet not a fact; we look to see the intent converted into action before we say that war has begun. Now since in this latter day, the whole world knows at its breakfast table pretty well what is taking place at the chancelleries, the gradual change in mental attitude of one state toward another can be seen, studied, perhaps influenced, by all other states. There may be uncertainty but there is no deceit. Every state department, every stock exchange, is weighing the probabilities and watching for the irrevocable word. What word is final, what word means war, that is a matter of conventional diplomatic usage.

All this is a statement, in sentimental terms, as well as a partial explanation, of the fact, that declarations of war in advance of hostilities, are not necessary or even customary, because superfluous.

Perhaps it is worth while to state here, what Declarations of War are supposed to be and what they really are. For there are other papers issued early in a conflict, defining other relations, which are apt to be mistaken for them. There are three possible interests in war to be looked out for, and the conditions to govern them officially stated. (1) Those of the combatants themselves; what methods of war they will employ; what grace they will give to one another's property; what duties they will exact from their own peoples. (2) Each must notify the neutral of the fact of war and define the rules to be applied to him. Until thus notified, neutral states recognize no duties. (3) The neutral in turn specifies what rights he will lay claim to and warns his subjects of their

duties in the premises. No one of these announcements properly speaking, is a Declaration of War, which is the bare notification of one state to another that a condition of hostilities exists between them and dates from a day certain.

But a Declaration of War is commonly supposed to be a warning, in advance of hostilities, that war *will* begin on a day certain.

That a declaration is not essential to the beginning of legal warfare is accepted by most writers on the subject and agreed to by the prize courts. Thus Sir William Scott, giving judgment in the case of the Eliza Ann in 1813, said "War may exist without a declaration on either side. It is so laid down by the best writers on the law of nations." [1] And Mr. Justice Sprague in the United States District Court for Massachusetts, in 1862 affirmed that "War in all its fulness may exist without a previous declaration." [2] With these opinions the usage of nations agrees. General Sir J. Frederick Maurice at the instance of his government, has compiled a list of wars in the last two centuries which were or were not preceded and introduced by a declaration. "Between 1700 and 1870," he writes, "less than ten instances have occurred in which Declarations of War have been issued prior to hostilities. On the other hand 107 cases are recorded during this period, in which hostilities have been commenced by European powers and by the United States without declaration. The War of 1870 offered the unique example of a notice (sent by France to Germany) to the Court of the assailed power, prior to hostilities. Moreover," he adds, "no state has more publicly sanctioned surprises than the United States, its form of a Declaration of War being a vote of Congress that a state of war actually exists between the United States and such and such a power."

But, it may fairly be asked, if declarations are so unusual in advance of hostilities, why should they be made at all? Sometimes they are not made. When they are issued, however, sub-

[1] The Eliza Ann. 1 Dods, 244.

[2] The Amy Warwick. 2 Sprague, 123.

sequently, I think the motive is to have a definite point from which to date the change of jural relations in the subjects of the declarant. For war in the twinkling of an eye works a revolutionary change in the legal relations of two peoples, their partnerships, their debts, their whole commercial intercourse. So that for domestic purposes it is convenient to know when war began.[1]

Not only is a declaration not necessary to the legal beginning of war, as evidenced by the opinions of jurists, the dicta of admiralty judges and the usage of states, but even when made it does not necessarily mark the commencement of war; may in fact be largely disregarded as an important factor in such commencement. This will be made clear later. It is referred to here to emphasize the point that the thing to be kept in mind in the crisis of an international difference, is not what one nation or the other may declare, but what they actually do. It is by facts not assertions that the status is judged.

We are now in a position to turn to the first inquiry proposed, viz., at what point in the discussion of a serious question between states, a resort to violence will be the natural next step and not a treacherous act.

If declarations are not *de rigucur*, are in fact a negligible factor, if the actual facts in the case are solely determinative of the position of affairs, the answer to such a question must be this: when the peaceful struggle of diplomacy is put an end to by conventional language; still more when the intercourse of diplomats is broken off by departure or recall; most of all when a demand is formulated as essential to further friendly relation (an ultimatum) and is refused, expressly or by implication—then the whole world knows that a breach has come, that in point of fact friendly relations have ceased. This justifies violence, though it does not necessarily mean violence. I ask again what is this conventional language which means a breach—what is the irrevocable word? Let us take two or three recent cases by way of illustration and answer. And first our own war with Spain. In this case there was do-

[1] Griswold *vs.* Waddington [15 Johnson's Reps., 57].

mestic legislation which was tantamount to a declaration of war; there was a break in diplomatic intercourse; there was an ultimatum sent to Spain which the Spanish Government dodged by the device of dismissing the American minister before he could deliver it; there was violence ordered and committed; finally there was a declaration of war retroactive in its terms, a curious sequence. Here is the chain of events. First the Senate Resolution that Cuba is and ought to be independent; that Spain withdraw its forces and reliquish its authority; that the President be authorized to use force to make the resolution effective; but that the United States disclaimed any intention of itself possessing Cuba. In conference the other House accepted this April 19th, and the President signed it, on the 20th. It was communicated to the Spanish minister on the 21st, and thereupon he left the country. Also on the 21st the fleet was ordered to Havana and a blockade was proclaimed. On the 23d the first hostile shot was fired to heave to the Buena Ventura. On the 25th came the formal Declaration of War, but stating that war had existed since the 20th. Of these acts surely the joint resolution of Congress was enough to justify violence, unless Spain by an immediate surrender had "relinquished authority" and promised to withdraw her forces. The dismissal of the minister at Madrid made the breach complete.

Or look at the events immediately preceding the Boer invasion of Natal. An offer of the franchise to English subjects after five years' residence was made, but coupled with a demand for the renunciation by Great Britain, of all claim to interfere in the domestic affairs of the Transvaal. This was refused by Mr. Chamberlain. Parliament voted supplies; reserves were called out; an army corps mobilized; transports chartered; troops concentrated on the Natal border. Accordingly the Boers, on October 9th, sent a conditional ultimatum giving a definite limit for the withdrawal of troops under penalty of war and on the 12th invaded Natal. There was no Declaration nor was there any treachery. The ultimatum rejected was fair and sufficient warning.

Turn now to the events preceding the present war in the

East, the justification of which has nothing to do with our question. There had been protracted negotiations between Russia and Japan on a vital matter, the disposition of Manchuria and Korea. Repeatedly had Japan asked for a final and favorable answer. Meanwhile Russia had heavily reinforced her Manchurian army instead of evacuating the province as promised.

She had moreover despatched nine additional ships of war to the East, three of them battle ships. Then Japan determined to be duped no longer and at the end of January insisted on an answer to her proposal for a settlement. Count Lamsdorff thought an answer possible February 2d, but refused to name any definite date. The Japanese government waited until February 5th, then instructed their minister at St. Petersburg to hand a note to the Russian Government, justifying their action and using this language.

"In the presence of delays which remain largely unexplained, and naval and military activities which it is difficult to reconcile with entirely pacific aims, * * * the Imperial Government have no alternative than to terminate the present futile negotiation. In adopting that course, the Imperial Government reserve to themselves the right to take such independent action as they may deem best to consolidate and defend their menaced position as well as to protect their established rights and legitimate interests." Simultaneously—this was on February 6th, at four in the afternoon—Mr. Kurino was instructed to announce in writing his intended departure from St. Petersburg. The same day Baron Rosen, in Tokyo, was informed of these facts in very much the same language. The naval engagement off Chemulpo occurred February 8th, and the attack on the Port Arthur fleet a few hours later, but independently and in ignorance that a blow had already been struck. Both powers declared war on the tenth.

In each of these cases violence was done before the declaration of war, if any, was made. In the two former cases there certainly was apparent no desire to catch an enemy unawares. Regular, customary, steps led up to a breach, then fighting began. Was it not true also as between Japan and

Russia that an interchange of notes convinced Japan that she was being played with; that she warned Russia of her intention to stop diplomacy and safeguard her threatened interests; and that she broke off peaceful relations by withdrawing her minister. Japan, in other words, took the conventional steps to indicate that peace no longer prevailed. Is Russian diplomacy so simple-minded as to have really misunderstood? General Maurice, in his "Hostilities without Declaration of War" already alluded to, gives numerous cases where he believes a desire to take another state unawares, to have been the motive of hasty violence. Whether this is true and whether it is legitimate or not, I venture to say that it is scarcely possible to-day. For hostilities mark a state of affairs of which the civilized world is now perfectly aware in advance. Instead of a declaration of war to announce the beginning of hostilities, we have therefore some break in the chain of diplomacy which amounts to precisely the same thing, and there is no more desire to take an enemy unawares or likelihood of doing so, in the one case than in the other. I would not be understood as saying that the cessation of diplomatic intercourse between two states always means war. That may be done to mark displeasure which has not gone the length of violence; it is not infrequent; it has sometimes lasted for years. But when preceded by warlike preparation and attended by fair warning couched in the language of diplomacy, it certainly does justify war, and usually produces it.

Turn now to the second of the questions proposed: from what moment does a war date? I take the liberty of using here with changes, an article contributed by me some years ago to the Yale Law Journal.

It has been already intimated that a declaration, even if made, is a comparatively unimportant factor in dating a war, because it does not necessarily or often, precede hostilities. It is a warning issued by a state to its own people, or to the neutral, that war has begun, and not a warning to the enemy that war will begin at a certain future date. Marking thus a status already existing, it cannot itself originate that status. The outbreak of war gives rise to the declaration, not the declara-

tion to the outbreak. If war does not date from a declaration, it must date from a fact then, so far at least as the right of prize is concerned, namely from the fact of violence.

Snow's Manual for our Naval War College (p. 79, 2d ed.) states this in so many words: "When there is no declaration, war dates from the first act of hostilities, and even if there should be a subsequent declaration, the beginning of hostilities still remains the date of the beginning of the war." So also Hall (International Law, 2d ed., p. 349): "If the above views are correct, the moment at which war begins is fixed as between belligerents by direct notice given by one to the other, when such notice is given before any acts of hostility are done, and when notice is not given, by the commission of the first act of hostility on the part of the belligerent who takes the initiative." And Owen, in his "Declaration of War," says, p. 12, "War having once been commenced, a formal declaration to the enemy can, it would seem, be formulated and communicated at leisure, if it so please the aggressor," citing the fact that "in 1877 the Russian declaration of war against Turkey was preceded by some hours by the entry of the Russian forces into Turkey." A similar priority of armed conflict to legal declaration occurred in our own war with Mexico, the battles of Palo Alto and Reseca de la Palma having been fought before Congress recognized by Act a state of war as existing, and many similar instances can be found, as in the late war between China and Japan.

It is the fact of violence, then, and not the declaration of a status, upon which we must really fix our eyes, if we should ask when war begins. And this introduces the main inquiry of our second topic. Of what nature must that act of violence be which, so to speak, originates a war, which is paramount in the eye of the law to an announcement by proper authority that war began on a certain date?

Here we are on uncertain ground.

There must naturally be some official warrant to a ship of war for aggressive action, or a clear case of self-defence, else its making war may be disavowed. Even with this, as Professor Takahashi has said, preparation for war is not war *de*

facto itself. It is also true that there may be acts of violence, yet no war, as was the case between the United States and France at the end of the eighteenth century. But with conflict a fact, and legislative or executive sanction not wanting, the first moment of conflict is the date from which war is reckoned, not the moment of sanction or the moment when orders for violent action were given. The question thus relates not so much to the date of a certain event as to the character of that event.

In land warfare, actual conflict between states must involve the invasion of one of them. There is thus the crossing of a boundary, the use of force within a foreign jurisdiction, to mark the changed relations and to date them from.

But the high seas are subject to no state's sovereignty. Upon their levels lie no boundaries to be crossed; within their confines, no status of occupation to be defined. If two ships of war meet and fight, and their action is not disavowed, that constitutes the beginning of war. But suppose that one of these ships of war meets a mere merchantman of the other nationality, can the war be begun by her capture as legitimately as by battle with the armed ship?

The argument certainly sounds rather paradoxical. The capture is valid because war exists; war exists because the capture has taken place. And yet so far as reason goes, this is a logical position. For preying upon an enemy's commerce, as the law exists, is as legitimate a part of warfare as the capture of his ships of war would be. Moreover, the attack on his property cannot open and legitimate the war, cannot make subsequent capture legal, and yet itself be illegal. But logic is not all, or even the major part, of a rule in International Law. The common law-bred mind wants precedent as well. What warrant is there for believing that hostilities can legally be opened by the seizure of private property other than the old usage of hostile embargo, now happily out of date? This point was raised, though not settled, in the well-known Kow-Shing affair, at the outbreak of the Japano-Chinese war, the issue turning on another fact. The Kow-Shing was an English steamer hired to convey troops to Corea, by the

Chinese government, and actually having 1,100 officers and soldiers on board, with much military material. She was sighted at 8.30 a. m., July 25, 1894, by the Japanese fleet. One of the ships composing it hove the Kow-Shing to, inspected her loading and ordered that she should follow her. The British captain agreed, but the Chinese on board threatened his life if he did so, and he signalled this fact to the Naniwa. After a considerable interval, during which the Japanese ordered him to leave his ship, which the Chinese prevented his doing, Captain Galsworthy and several others jumped overboard, their passengers firing upon them in the water. Then the Naniwa put a shot into the Kow-Shing and the latter went down. If war had begun, the merchantman, carrying Chinese troops, was a Chinese transport, no matter what her nationality might be, and as was afterwards made clear, war had begun that same morning at an earlier hour, by combat between this same Japanese fleet and two Chinese men-of-war. But this did not at once appear and the question was argued in England on other grounds. Could the attack on the Kow-Shing in itself begin the war, thus making her an enemy's transport, and legalizing the destruction of neutral property thus impressed with a hostile character? Two English jurists expressed themselves on this point. Professor Holland wrote to the *Times*: "If the visiting and eventual sinking of the Kow-Shing occurred in time of peace, or in time of war before she had notice that war had broken out, a gross outrage has taken place. But the facts are otherwise. In the first place a state of war existed. It is trite knowledge, and has been over and over affirmed by courts, both English and American, that a war may legally commence with a hostile act on one side, not preceded by declaration. * * * Whether or not hostilities had previously occurred upon the mainland, I hold that the acts of the Japanese commander in boarding the Kow-Shing and threatening her with violence in case of disobedience to his orders, were acts of war.

In the second place, the Kow-Shing had notice of the existence of a war, at any rate, from the moment when she received the orders of the Japanese commander."

This opinion, reiterated after the author was in full possession of the facts, would seem to consider the stoppage of the transport a lawful beginning of the war.

But another writer, Professor Westlake, does not go so far as this. "It is true," he wrote, also to the London *Times*, "that the commencement of war *de facto* is only valid in International Law as between the parties to the war so commenced, neutrals being entitled to notice before they can be made liable to the peculiar responsibilities which a state of war imposes on them. But the Kow-Shing was not acting as a neutral breaking a blockade or carrying contraband of war. She was a transport in Chinese service, and therefore a belligerent, if China was a belligerent. But the Japanese could not make the Kow-Shing a belligerent by attacking her," and he argues that the attack could be justified only on the ground of military necessity, or the occurrence of acts of hostility prior to it. On the point under inquiry, then, these two opinions differ absolutely. They are cited in an interesting work on those questions in International Law which arose during the Chino-Japanese war of 1894, by Professor Takahashi, who was himself detailed to accompany the fleet as adviser in such matters. He does not attempt to decide between these views, having safer ground to stand on, because there was proof of an earlier conflict. "Whether a war can be commenced by an act of search" he writes "or whether it must be commenced beforehand by some acts of hostility committed elsewhere, is a difficult legal question, and I think there is no necessity to decide it in the present case."

Upon this point, it is proper to make this comment: that every "act of hostility committed elsewhere" on sea, except a collision between ships of war under their own flags, involves visitation and search as a preliminary to capture: that this in turn would require some earlier "act of hostility elsewhere" to legalize it; and that thus we are brought face to face with something very like absurdity. It is like the jam yesterday, and jam to-morrow, but never jam to-day, which tried Alice so sorely.

We turn now to the early hours of our own war with

Spain. The official steps leading up to it have been already recited; the joint resolution of Congress; the order to blockade and its proclamation; the declaration that war existed; the publication of the rules to govern the conflict.

The first shot fired in the war was across the bows of the Spanish steamer Buena Ventura, off the Florida coast, on April 22. The first action in the war was the bombardment of the defences of Matanzas on April 27. Which of these various events, executive, legislative or military, began the war?

Clearly we cannot date it from the joint resolution of Congress declaring the people of Cuba of right independent, and warning Spain to withdraw her forces from the island, because if Spain had complied that would have been the end of it. An ultimatum is not war, though it warrants war and usually leads to it.

Nor were the order of the Navy Department establishing blockade and the President's proclamation legalizing it by the proper notification, events from which we can date, because, although war measures, they were war measures in preparation, not in being, and could not be made effective until some hours or perhaps days after their issue. In point of fact the Buena Ventura was captured before blockade was a fact.

There remains to be considered the declaration of war issued on the 25th of April, and in terms making the 21st the first day of war. For some purposes, like the dissolution of partnerships between subjects of the two belligerents, this date might be held authoritative, for others it may not be conclusive. Suppose that Spain also issued a declaration or its equivalent, and on a different date from that of the United States, which should govern? She did in fact, on the 23d of April, declare her treaties with us terminated by the "state of war existing." We are thus thrown back on the rule noticed earlier in this paper, that even if subsequently a declaration of war be made, nevertheless war dates from the beginning of hostilities, and ask whether the capture of the Buena Ventura may be included in this category. This prize case, condemned by the District Judge of the Southern District of Florida, was later reviewed in the Supreme Court of

the United States. The decision of the lower Court was reversed — three justices dissenting — but on the following ground: On April 26, President McKinley had issued a proclamation exempting from seizure Spanish merchantmen which were not engaged in the naval service of their country in any way, and which were in any United States ports or prosecuting a voyage from any such ports, the exemption to run until the 21st day of May. In point of fact the Buena Ventura had commenced her voyage from a United States port upon April 19, seven days before the exemption granted by the President was proclaimed. Did this exemption date from its issue only, or should it be held to cover ships sailing under the same conditions earlier than the proclamation? Here the Court put a liberal construction upon the President's language and probable intention. To quote the decision itself, the Court put upon the words of the proclamation "the most liberal and extensive interpretation of which they are capable," believing that the vessel was of a "class which this Government has always desired to treat with great liberality." Its argument was as follows: "The omission of any date in this clause (fourth clause of President's proclamation) upon which the vessel must be in a port of the United States, and prior to which the exemption would not be allowed, is certainly very strong evidence that such a date was not material, so long as the loading and departure from our ports were accomplished before the expiration of May 21. It is also evident from the language used that the material concern was to fix a time in the future, prior to the expiration of which vessels of the character named might sail from our ports and be exempt from capture. The particular time at which the loading of cargoes and sailing from our ports should be accomplished was obviously unimportant, provided it was prior to the time specified." One further sentence is necessary to my narrative. "Deciding as we do in regard to the fourth clause, it becomes unnecessary to examine the other grounds for a reversal discussed at the bar." This is a pity, for one of these other grounds exactly touches the subject of our inquiry. The counsel for the Buena Ventura in their very able brief had argued that whether the capture

was in violation of the President's proclamation or not, it must be held illegal because at the moment of its occurrence no war existed. "The capture was premature, and out of accord with recent practice. At the time the Buena Ventura was seized there had been no declaration of war, nor had any acts of violence occurred between the armed or naval forces of the different nations. No hostilities, which in International Law are deemed to constitute a beginning of war without a declaration, had taken place. Without a declaration, it seems that war does not begin until some blow is struck or some shot fired. * * * Nothing was done by the United States necessarily constituting an act of war, at least until the fleet reached the Cuban shore and actually established a blockade. It was while the fleet was leaving the Key West harbor, bound for the blockading stations, that this capture was made. * * * It was not in accordance with international usage to make the Buena Ventura hostile by firing upon her."

Upon this argument, unfortunately for our purposes, the Supreme Court does not comment.

In refusing to saddle costs upon the claimants, it *does* use this language, however: "In this case, but for the proclamation of April 26, the ship would have been liable to seizure and condemnation as enemy property." But even if this were true, the Court does not declare whether in its judgment, barring the proclamation, the ship would have been good prize because war was begun by its visitation, search and seizure, or because war was declared to date from the day before its seizure by a subsequent Act of Congress.

So that upon the point raised in this inquiry, we are still in the dark, so far as any judicial practice goes. Perhaps we may go, however, as far as this. If no exemption is ordered, and no declaration of war is issued, and before any conflict of arms has taken place, though this presently occurs and a war ensues, the visitation of any enemy merchant ship involving notice to her of the commencement of hostilities, is such an act of violence as to make her condemnation as prize, on the ground that war had thereby been begun, very probable.

At the risk of tediousness may I briefly restate the points I have tried to bring out:

Declarations of war are neither necessary nor usual in advance of hostilities.

When subsequently made it is for domestic purposes or at least not with intent to warn an enemy.

The world is so closely tied together that this absence of a warning deceives nobody. It is omitted not with intent to deceive, but as a superfluity.

Instead of it the political world studies the diplomatic moves of the disputants.

Any one of several events will justify a violent next step, such as an ultimatum rejected, a domestic act voting war, even the breaking off of diplomatic relations when explained by fact or statement to mean hostility, not mere non-intercourse.

The justification of violence does not mean violence necessarily; that is a next step which must be ordered. If so ordered, war dates from the first collision. This may possibly result from the mere visitation of an enemy's ship, in advance of an armed conflict.

UNNEUTRAL SERVICE.

GEORGE GRAFTON WILSON.

It is now generally admitted that the rights and duties of neutrals in time of war are correlative. It was formerly claimed that the denial or grant of the same privileges to both belligerents constituted neutrality. Such a doctrine of neutrality might make it possible for a state to deny all the privileges which the first party to the war would especially need and which the second might not need, and to grant those privileges which the second might need and which the first might not need. It was seen that such a position was not neutral in fact, if sometimes so called. Gradually a more equitable view has come to prevail. Neutrality is at present held to demand "an entire absence of participation, direct or indirect, however impartial it may be."

The state is responsible for the observance of neutrality within its sphere of competence. The state is responsible for its own action or failure to act where its jurisdiction can reasonably be exercised. The neutral state cannot be required to assume the burdens of prosecuting the war, however. If certain articles are declared contraband of war, the belligerent making the declaration cannot claim that the neutral state is under obligation to prevent its merchants from shipping such articles from neutral ports in the way of ordinary trade. To demand that the neutral prevent the sale of many articles included within the lists of contraband would be to put the burden of enforcing a belligerent's declaration upon the neutral, and this at the expense of the neutral's trade.

Neutrality is, however, binding not merely upon the state, but also upon the citizens of the neutral state. The state is responsible for its own direct or indirect participation in any violation of neutrality, as in the case where it allows its ports to be a place for the fitting out of hostile expeditions. It is not, however, responsible for the action of each of its citizens, nor can it be. The citizen is ordinarily informed by declaration of neutrality of the position which the state proposes to assume and the citizen is liable to certain consequences for violation of the provisions of the declaration.

As regards the citizen of the neutral state, the declaration usually makes known:

1. That the citizen himself will become liable to certain penalties which the neutral government may inflict in case he performs certain acts within the jurisdiction of the neutral state which may lay the state open to claims of indemnity because of failure to observe neutrality, *e. g.*, if within the jurisdiction of the neutral state he fits out an hostile expedition or accepts and exercises a commission from the belligerent.

2. That the citizen's property will become liable to certain treatment by the enemy if he undertakes certain acts, *e. g.* carriage of contraband to the belligerent, or violation of the blockade, when the goods or both goods and vessel may be seized by the belligerent.

The penalty for the acts of the first class falls upon the person

of the guilty neutral, and if found guilty within its jurisdiction the penalty is imposed by his own state. The penalty for acts of the second class falls upon the goods, or goods and vessel, and is inflicted by the belligerent. In this latter case the neutral person is not regarded as guilty of offense and is not made a prisoner of war.

There is a third class of acts which partake somewhat of the nature of the acts of the first class which are forbidden and penalized by the neutral state. These are often committed beyond the jurisdiction and responsibility of the neutral state, and when undertaken by the neutral citizen do not involve the neutral state in liability, unless the state is in some way party to the acts.

Various attempts have been made to bring these acts under one of the first two classes mentioned above. Attempts also have been made to assimilate the acts to the carriage of contraband or violation of blockade. Some of the acts have been considered analogous to contraband. The acts of this third class differ very widely, however, in nature, intent, and penalty, from the carriage of contraband or violation of blockade. The nature of the carriage of contraband is commercial, the intent is to obtain exceptional profits because of the special demands of the state at war, and the penalty is the confiscation of the contraband goods. Thus considered, the idea of contraband becomes reasonably clear, though the applications of the principles underlying the doctrine of contraband may not always be easy in concrete instances. It is natural that the attempt should be made to include the forms of service which the neutral should not undertake under the laws of contraband, because the idea of contraband was clear long before there was any clear idea of neutrality. Grotius, in 1625, makes an excellent classification of contraband, upon which little improvement has been made. His conception of neutrality is, however, very far from the modern idea. Indeed, the current ideas of neutrality have for the most part developed within one hundred years. Many writers did not fully comprehend this development and tried to extend the old nomenclature of contraband and blockade to cover new conditions possessing

characteristics which did not admit such classification. It would be a difficult problem so to extend the proper doctrine of contraband as to cover certain acts which have been sometimes classed as analogous to contraband. Even while using the term, "Analogues of Contraband," Hall, speaking of the analogy which the carriage of military dispatches and persons possesses to the carriage of articles contraband of war, admits that it is "always remote."

One of the acts most frequently classed as analogous to the carriage of contraband is the carriage of dispatches for the enemy. Upon this subject there has been much discussion, especially since the attempted defence of the action of the United States in the case of the *Trent* in 1861. It would be impossible to find the authority upon which the Secretary of State of the United States, in his letter to Lord Lyons of December 26, 1861, based the statement that "All writers and judges pronounce naval or military persons in the service of the enemy contraband. Vattel says war allows us to cut off from an enemy all his resources, and to hinder him from sending ministers to solicit assistance. And Sir William Scott says you may stop an ambassador of your enemy on his passage. Dispatches are not less clearly contraband, and the bearers or couriers who undertake to carry them fall under the same condemnation." (III. Wharton, International Law Digest, p. 440.)

On the contrary, the difference between the carriage of contraband and the aid afforded by the transmission of information was early recognized by Sir William Scott. He, in the case of the Atalanta in 1808, said:

"If a war intervenes and the other belligerent prevails to interrupt that communication (between mother country and colony), any person stepping in to lend himself to effect the same purpose, under the privilege of an ostensible neutral character, does in fact place himself in the service of the enemy-state, and is justly to be considered in that character. Nor let it be supposed that it is an act of light and casual importance. The consequence of such a service is indefinite, infinitely beyond the effect of any contraband that can be conveyed. The carry-

ing of two or three cargoes of stores is necessarily an assistance of limited nature; but in the transmission of dispatches may be conveyed the entire plan of the campaign that may defeat all the projects of the other belligerent in that quarter of the world. * * * The practice has been, accordingly, that it is in considerable quantities only that the offence of contraband is contemplated. The case of dispatches is very different; it is impossible to limit a letter to so small a size as not to be capable of producing the most important consequences in the operations of the enemy. It is a service, therefore, which, in whatever degree it exists, can only be considered in one character, as an act of the most noxious and hostile nature." (6 C. Rob. 440.)

This opinion of the great English jurist, rendered early in the nineteenth century, shows that the transmission of dispatches of varying character can not properly be put in the same category with contraband because so different in nature and results.

The United States courts as well as the British courts recognize the difference in nature between commerce in contraband and commerce undertaken in the enemy's employ.

In the case of *The Julia,* Story rendered the opinion of the United States Supreme Court in 1814, to the effect "that the sailing on a voyage under the license and passport of the enemy, in furtherance of his views or interests, constitutes such an act of illegality as subjects the ship and cargo to confiscation as prize of war." (8 Cranch 181.)

The opinion rendered in the case of *The Julia* was subsequently followed with approval in other cases. (*The Aurora,* 8 Cranch 203; *The Hiram,* 8 Cranch 444; *The Ariadne,* 2 Wheaton 143.) In all these cases subjects of one of the belligerents accept the service of the other and sail under his license. The principle applies equally to a neutral accepting such service for one of the belligerents.

Indeed, it may not be necessary that the master of a vessel be a knowing party to the undertaking which aids the enemy. Lord Stowell has held that "It will be sufficient, if there is injury arising to the belligerent from the employment in which the vessel is found. The master may be ignorant and per-

fectly innocent. But if the service is injurious, that will be sufficient to give the belligerent the right to prevent the thing from being done." (6 Rob. 430.)

Not merely in court decisions, but in the opinions of text-writers, distinctions are made in the acts of neutrals.

Dana, in note 228 to Wheaton, speaking of the carrying of hostile persons or papers in contrast to contraband, says:

"But the subject now under consideration is of a different character. It does not present cases of property or trade, in which such interests are involved, and to which such considerations apply, but simply cases of personal overt acts done by a neutral in aid of a belligerent. * * *

"Suppose a neutral vessel to transmit signals between two portions of a fleet engaged in hostile combined operations, and not in sight of each other. She is doubtless liable to condemnation. It is immaterial whether these squadrons are at sea or in ports of their own country or in neutral ports, or how far they are apart or how important the signals actually transmitted may be to the general results of the war, or whether the neutral transmits them directly or through a repeating neutral vessel. The nature of the communication establishes its final destination, and it is immaterial how far the delinquent carries it on its way. The reason of the condemnation is the nature of the service in which the neutral is engaged." (Wheaton, D. International Law, note 228.)

The distinctions clearly made in the early half of the nineteenth century seems to have been somewhat neglected in the latter half, and from this neglect confusion in treatment and forced constructions have arisen.

Whatever the name, a considerable range of actions involving neither the doctrine of contraband nor the doctrine of blockade should have some distinguishing name. Various names have been from time to time given to some of these actions, such as "accidental contraband," "analogues of contraband," "enemy service," "unneutral service," etc. The terms involving the use of the word "contraband" are admittedly inappropriate and forced. The term "enemy service" would be ambiguous because often used in a sense not

involving any of the actions here discussed. The phrase "unneutral service" seems to be the least ambiguous and most distinctly descriptive. The decisions of the courts and the opinions of the writers point clearly to the fact that it is the nature of the service which must be considered in certain cases, while the nature and destination of the goods in case of contraband, and the military condition of the place in the case of blockade, determines the penalties.

Professor Lawrence recently very properly pointed out that "In truth between the carrying of contraband and the performance of what we may call unneutral service there is a great gulf fixed." (International Law, p. 624.)

As states have drawn nearer together through the elimination of the barriers of time and space in matters of communication, the possibilities of unneutral service have greatly multiplied. It would not be possible to be neutral in modern days and to maintain with Grotius that "it is the duty of those who have no part in the war to do nothing which may favor the party having an unjust cause, or which may hinder the action of the one waging a just war, * * * and in a case of doubt to treat both belligerents alike, in permitting transit, in furnishing provisions to the troops, in refraining from assisting the besieged." (De Jure Belli ac Pacis, Lib. III., C. XVI., iii., i.) Indeed, all these positions of Grotius are now practically reversed.

Modern neutrality proclamations have by various circumlocutions tried to prohibit acts involving assistance by neutral subjects in the performance of warlike acts. The Proclamation of the United States of February 11, 1904, issued in consequence of the Russo-Japanese War, after recognizing the general principle, "free ships, free goods, except contraband of war, and free goods always free, except contraband of war," in a qualified way warns its citizens against unneutral service, saying "that while all persons may lawfully, and without restriction because of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war,' and other articles ordinarily known as 'contraband of war,' yet they cannot carry such articles upon the high seas for the

use or service of either belligerent, nor can they transport soldiers and officers of either, or attempt to break any blockade which may be lawfully established and maintained during the war, without incurring the risk of hostile capture, and the penalties denounced by the law of nations in that behalf."

The distinction is clearly made in the same war in the Proclamation of the Netherlands Government to its citizens, in which "Their attention, and especially that of captains, ship-owners and ship-brokers, is directed to the danger and risks consequent on the non-observance of efficient blockade of the belligerent parties, the conveyance for them of contraband of war or military dispatches (unless in the way of regular postal service), and the execution of any other transport service in their interest." The "Instructions to Blockading Vessels and Cruisers" issued by the Navy Department of the United States, June 20, 1898, as General Order, No. 492, section 16, provides that "A neutral vessel in the service of the enemy, in the transportation of troops or military persons, is liable to seizure;" and in section 15, that "A neutral vessel carrying hostile dispatches, when sailing as a dispatch vessel practically in the service of the enemy, is liable to seizure; but not when she is a mail packet and carries them in the regular and customary manner."

The Russian Declaration of February 14, 1904, section 7, states that "There are assimilated to contraband of war the following acts, forbidden to neutrals: the transport of enemy troops, the dispatches or correspondence of the enemy, the furnishing of transports or ships of war to the enemy. Neutral vessels guilty of forbidden acts of this character may be, according to circumstances, seized and confiscated."

The position taken by Russia is entirely justifiable, and the persons concerned in the service become prisoners of war. Hall sets forth the contrast as follows: "It will be remembered that in the case of ordinary contraband trade the contraband merchandise is confiscated, but the vessel usually suffers no further penalty than loss of time, freight, and expenses. In the case of transport of dispatches or belligerent persons, the dispatches are of course seized, the persons become prisoners

of war, and the ship is confiscated. The different treatment of the ship in the two cases corresponds to the different character of the acts of its owner. For simple carriage of contraband the carrier lies under no presumption of enmity towards the belligerent, and his loss of freight, etc., is a sensible deterrent from the forbidden traffic; when he enters the service of the enemy, seizure of the transported objects is not likely to affect his earnings, while at the same time he has so acted as fully to justify the employment towards him of greater severity." (Hall, International Law, 5th Ed., p. 678.)

From the discussion thus far it is evident that the forms of unneutral service which have been hitherto most common are:

1. Carriage of enemy dispatches or correspondence.
2. Carriage of enemy persons.
3. Enemy transport service.

In recent wars, auxiliary coal, repair, supply, cable ships and the like have become of great value. Neutrals may easily engage in such service, and it would be very difficult to extend the doctrine of contraband or of blockade so as to cover their action. Even more difficult would it be to extend it so as to cover the service which might be rendered to the enemy by a submarine cable or by the wireless telegraph. Of the use of the submarine cable Captain C. H. Stockton, U. S. N., says: "Besides the contraband character of the material of a telegraph cable, in use or en route, as an essential element of belligerent communication which renders it liable to seizure anywhere out of neutral territory, there is another phase of this question, and that is in regard to the nature of the service afforded by such a communication by a neutral proprietor to a belligerent.

"This service is in the nature of both an evasion of a blockade and, what has been termed of late years, of unneutral service. It does not matter in this phase whether the cable be privately or state owned so far as the technical offence is concerned, though the gravity and consequences are naturally much more serious in the latter case. Let us take, as an instance, the case of a blocked or besieged port, as Havana or Santiago were during the late hostilities. The communication of

information or of dispatches, or of means of assistance which can be made by such means, is an unneutral service, and would resemble also the violation of blockade by a neutral vessel carrying dispatches, the capture of which on the high seas outside of territorial jurisdiction would be a justifiable and indisputable act of war.

" Extend this to a country or port not blockaded or beseiged, and you would yet find the cable, owned, let us presume, by a neutral, the means of performing the most unneutral kind of service, of a nature which, done by a ship, would most properly cause its seizure, condemnation, or destruction by the offended belligerent." (Proceedings U. S. Naval Institute, Vol. XXIV. 3, p. 453.)

Pilotage by a neutral of an enemy vessel, the repetition of signals for the benefit of the enemy by any means, " to supply the inhabitants of a place besieged with anything required for immediate use " (Halleck, International Law; Baker, Vol. II., chap. xxv.), and many other acts, the number of which will continually increases with the development of means of communication, and transmission must be provided against by something beyond the laws of contraband and of blockade. Such acts are in the nature of unneutral service. Under some title, and " unneutral service " seems better than any thus far proposed, these acts must be recognized as in a distinct category. Their nature is hostile, because such service should primarily be performed by belligerent agents and agencies. The neutral agent in undertaking the act identifies himself with the belligerent to an extent which makes him liable to the treatment accorded to the belligerent. He is therefore liable to capture as an enemy, and his goods are liable to the treatment accorded to the enemy under similar conditions. The agent may be made a prisoner of war, and the agency may be seized, confiscated, or, in certain instances, so treated as to render it incapable of further rendering unneutral service.

The clear recognition of this category of unneutral service which is gradually manifest will in a measure remove the confusion resulting from certain forced interpretations of principles of International Law. Such principles, as those of con-

traband and blockade, were formulated at a period when modern ideas of neutrality were unknown and when such ideas, if advocated, would perhaps have been regarded as entirely visionary. Acts which differ in nature, in intent, and in penalty, as do acts involving contraband or blockade from those involving unneutral service, should no longer be confused. The category of "unneutral service" which has been admitted in decisions of the courts, explained in the works of the text writers, described in proclamations, and distinguished in practice, deserves and should receive full and frank recognition.

CONTRABAND OF WAR.

HARRY PRATT JUDSON.

The law of contraband has had no material development for a hundred years past. Now, as in the days of Lord Stowell, merchandise with reference to contraband falls into three classes,—that which is always contraband, that which is contraband on occasion, and that which is never contraband. Now, as then, articles primarily intended for use in war belong in the first class, and articles which may have military or naval use, but which may also be employed in the ordinary avocations of peace, are in the second class. To be sure there are now specific articles unknown to the prize-courts of the early nineteenth century which may be found in either class. The Russian proclamation of the current year includes in contraband " Material and all kinds of substances for making explosives, such as torpedoes, dynamite, pyroxylin, various fulminating substances, conductors, and all articles used for exploding mines and torpedoes;" also, " Telegraph, telephone and railway material." Of course none of these things were known in the wars of Napoleon. The principle, however, does not differ. The Russians in 1904 make no mention of tar, oakum, cordage, masts, and ship-timber, which played so conspicuous a part in admiralty cases a century since. But here again it is by no means a change in principle, but only in the conditions of naval warfare. Wooden sailing-ships are as obsolete as the

archers of the Black Prince, and in lieu of material for their construction or repair we find enumerated "armor plate, and all kinds of ship's machinery or boilers, whether mounted or in parts." Methods of warfare have changed. The question of contraband, however, involves no new departure in law, but merely the application of old rules to new conditions.

The questions which in the present year have given rise to differences of opinion between Russia and some of the neutral powers do not relate, then, to any new view of law, but in the main merely to specific applications of existing law to particular articles. Under what circumstances, if any, may food be contraband? May railway, telegraph and telephone material properly be included under the class of articles which are unqualifiedly contraband? Such questions as these have led to earnest remonstrance on the part of the United States. The decision of the Vladivostok prize-court in the case of the steamer *Arabia* held "that the cargo, composed of railway material and flour.....destined to Japanese ports and addressed to different commercial houses in said ports, constitutes contraband of war;.....that the cargo bound for Japanese ports should be confiscated as being lawful prize." Secretary Hay wrote to Ambassador McCormick: "The judgment of confiscation appears to be founded on the mere fact that the goods in question were bound for Japanese ports and addressed to various commercial houses in said ports. In view of its well-known attitude it should seem hardly necessary to say that the Government of the United States is unable to admit the validity of the judgment, which appears to have been rendered in disregard of the settled law of nations in respect to what constitutes contraband of war." "The communication of the decision was made in unqualified terms, and the Department is therefore constrained to take notice of the principle on which the condemnation is based and which it is impossible for the United States to accept, as indicating either a principle of law or a policy which a belligerent state may lawfully enforce or pursue towards the United States as a neutral."

The Secretary continues: "When war exists between powerful states, it is vital to the legitimate commerce of neutral

states that there be no relaxation from the rule, no deviation from the criterion, for determining what constitutes contraband of war, lawfully subject to belligerent capture, namely: warlike nature, use, and destination. Articles which, like arms and ammunition, are by their nature of self-evident warlike use, are contraband of war if destined to enemy territory; but articles which, like coal, cotton and provisions, though of ordinarily innocent, are capable of warlike, use, are not subject to capture and confiscation unless shown by evidence to be actually destined for the military or naval forces of a belligerent."

This is the old and familiar doctrine of contraband, and aside from the reference to coal and cotton might have been written in the time of the first armed neutrality. The Russian prize-court, it seems, acted on the theory that the burden of proof rests on the neutral owner,—that articles potentially contraband are presumably designed for the enemy government if found with belligerent destination, unless proved to be for private use. This new doctrine Mr. Hay brushes aside in a few incisive words: "It cannot be admitted that the absence of proof, in its nature impossible to make, can justify seizure and condemnation. If it were otherwise, all neutral commerce with the people of a belligerent state would be impossible; the innocent would suffer inevitable condemnation with the guilty."

It need only be added that on appeal the judgment of the court at Vladivostok was reversed, and thus Russia definitely accords with the traditional view of the nature of contraband.

But what induced this assent by the Russian court of admiralty appeal to the statement of law by Mr. Hay? Was it the clear and cogent argument of the Secretary? Or was it because the law in the case is so simple that jurists vested with the responsibility of final adjudication have no alternative? Or was it on the whole the expediency of national policy?

The answer will be found by examining the judicial interpretations of international law within the last two centuries. Some few may be noted here. Sir William Scott's exposition of the equity of the rule of the war of 1756 as applied to the French colonial trade is most luminous. But after all the rule in question was at the outset a definite attempt by the courts to

provide a remedy for a state of things which was nullifying British naval supremacy, as in 1793 the formal opening of French ports to other nations was in like manner an evasion of the consequences of French inferiority at sea. In either case the doctrine was believed to be conducive to British belligerent interest, and in either case British courts found no difficulty in apprehending the sound law of a principle so useful for the success of the war and so readily enforcible by British naval power. In *The Queen v. Keyn* (1876) Cockburn, C. J., referred to a supposed statute of Parliament, and said: "That such legislation, whether consistent with the general law of nations or not, would be binding on the tribunals of this country,—leaving the question of its consistency with international law to be determined between the governments of the respective nations,—can of course admit of no doubt." It is true that the United States Court of Claims, in the case of the *Ship Rose v. the United States,* held the somewhat surprising view that an act of Congress could not be held binding if repugnant to a rule of international law. But the doctrine of the British courts is more in accord with the general practice of nations, and it will not be far from the truth to say that the definition of contraband, like other principles of the law of war and neutrality, in fact has been made by the act and in the interest of great belligerent sea powers, and that such definition, like other similar principles, is modified by neutral interests only so far as neutral powers are strong enough to embody their views in the shape of fleets and armies. This is a crude way to make law, but it is the method by which much of the law of nations has come into existence.

The last half century has seen a marked advance in the mode of creating international rules. The Congress of Paris, in 1856, adopted four rules, three of which the United States, when almost the only neutral, had urged in vain on the predominant naval belligerent. These rules are of course binding only on the signatory powers, but as only the United States, Spain and Mexico of the western nations, failed to accede to the treaty, and as both the United States and Spain as belligerents have since formally acted in accordance therewith, there

can be little doubt that these rules are to all intents and purposes a part of the law of nations. As to privateering, that is obsolete any way by the changes in the methods of maritime war. The several conferences at Geneva and St. Petersburg, the Berlin Congress of 1878, the Berlin Conference of 1885, the Brussels Conference of 1890, and the Hague Conference of 1899, are clearly indicative of an increasing tendency to adopt rules generally obligatory by definite acts in which all are concerned. Further, there is at present no one power so overwhelmingly preponderant on the sea as to be able to impose its will as the law of nations. The common consent which makes valid a proposed rule of international practice is therefore in these days on the whole much more likely to be a free assent than compelled acquiescence. In short there are signs that international law is emerging from the somewhat vague conditions which have marked its gradual evolution thus far, and for the future it is increasingly probable that international rules of conduct will assume the form of positive law.

In the light of these considerations it seems somewhat bootless to attempt the reconciliation of modern facts relating to the conduct of war with old customs of law which were created under circumstances long since obsolete. The materials of gunpowder are contraband, we say. But black powder is almost out of date now, and high explosives have taken its place. Their components, then, may justly be put under the same rules as sulphur and saltpetre. But what of raw cotton, so useful for certain forms of war to-day, and at the same time so essential to arts of peace? What also of telegraph and telephone materials and railway materials? Doubtless, the general principles of the eighteenth century may be made to cover these cases, just as the clause of our federal constitution giving Congress the power to establish post-roads may be made the legal basis of the fast mail on our great trunk railroad systems. But after all there are deeper questions relating to contraband than those which seek to unravel the existing principles of law as applied to specific forms of new hostile devices. To these questions, then, let us turn our attention.

In the first place, at this age of the world the old process of

modifying the law of contraband, so far as it may need modification, is by far too slow and cumbersome. To-day things move rapidly. It is the age of steam and not of sails. In the international conferences which now meet so frequently, and in which our own country is at present especially interested, there is afforded a ready means of reaching an agreement. If new conditions of war and neutrality require new definitions of contraband, or new principles in any way affecting the status of the trade in contraband, the matter should be taken up at the approaching Hague Conference and an attempt made to secure unanimity of action. This should present no insuperable difficulty. What may commend itself to the great powers would probably meet with little opposition from the small powers, and in this way a reasonable agreement might be attained, after full discussion in which all states interested would have a voice. The ratification by the powers of such agreement would form a body of law which would accord with the present situation and which, from the mode of its adoption, would not be open to dispute.

The spirit in which an international conference could approach the questions at issue, also, might be radically different from that in which nations deal with the same questions in time of war. In the latter case each nation as a rule has in mind only its own immediate interest. It may be for the advantage of one belligerent to construe the law of contraband as liberally as possible,—to make the scope of contraband quality as wide as possible,—to expose to condemnation the largest possible variety of commodities. Conversely, the other belligerent may desire a very strict interpretation of the law, finding trade with neutrals quite essential to the conduct of the war. Neutrals also usually desire trade to be as little hampered as practicable, in fact looking to the necessities of war for an impetus to commerce with each belligerent. A conference, on the other hand, would be free to take a far wider view of the whole case. Any conclusions which might be reached would of course be based on the fundamental purpose which might be determined. Should the rules adopted be primarily in the interest of a strong naval belligerent? Or of a weak naval belligerent? Or

should the main factor be the interest of neutral commerce? If the latter, should the decision rest on the advisability of interfering as little as may be with the normal commerce which prevails in time of peace? Or should it be intended to avoid curtailment of the additional commerce which comes into being from the very fact of war? During the wars of a century since, the carrying trade of Europe very largely passed to American shipping, and France and her allies drew great part of their subsistence from the provisions and raw materials which, whether from French colonies or from the United States, were carried in American bottoms. This commerce was the immediate fruitage of the war, and Great Britain felt it to be a distinct grievance,—a service to her enemy which was essentially unneutral. Hence the paper blockades,—hence the extension of the rule of the war of 1756, and Lord Stowell's doctrine of the continuous voyage. Should such commerce be distinctly encouraged,—as indeed the rules of 1856 actually do? Especially should the principles which may be adopted encourage the traffic in such new articles *ancipitis usus* as modern invention has made so necessary for war,—coal and other fuel, and the material for telegraph and telephone lines and for railway construction?

Or on the other hand, is there a far wider utility to conserve than that of any commerce at all, and should the law be determined by these larger considerations?

It is the opinion of the writer that this last view is the sound one, and that the determining principle in accordance with which new rules should be formed ought to be, on the whole, that war is an undesirable means of settling international differences, and that the new development of the law of nations, therefore, should be in the direction of discouraging an appeal to arms, of localizing it so far as practicable when it does occur, and in every reasonable way of limiting its disturbing effects to the immediate belligerents. The wise policy of the foreign office of the United States with reference to the present war in the Far East is a case in point. Law should have a similar trend.

If this view of the case is sound it follows that certain agree-

ments as to contraband may perhaps be reached which under other circumstances might not be considered. Neutral duties in other respects have gradually become quite sharply defined. The naked doctrine of our Supreme Court as outlined in the case of the *Santissima Trinidad,* for instance, classifies a war-ship in the hands of private owners merely as contraband of war. In the words of Mr. Justice Story: "The question as to the original illegal armament and outfit of the *Independencia* may be dismissed in a few words. It is apparent that though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial venture, contraband, indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage she would have been justly condemned as good prize, and for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation."

This is further expounded by Mr. Dana, in his note to Wheaton: "An American merchant may build and fully arm a vessel, and provide her with stores, and offer her for sale in our own market.....He may, without violating our law, send out such a vessel, so equipped, under the flag and papers of his own country, with no more force or crew than is suitable for navigation, with no right to resist search or seizure, and to take the chances of capture as contraband merchandise, of blockade, and of a market in a belligerent port. In such case, the extent and character of the equipment are as immaterial as in the other class of cases. The intent is all. The act is open to great suspicion and abuse, and the line may often be scarcely traceable; yet the principle is clear enough. Is the intent one to prepare an article of contraband merchandise, to be sent to the market of a belligerent, subject to the chances of capture and of the market? Or, on the other hand, is it to fit out a vessel which shall leave our port to cruise, immediately or ultimately, against the commerce of a friendly nations? The

latter we are bound to prevent; the former the belligerent must prevent."

This doctrine of contraband, in which, as Mr. Dana observes, "the act is open to great suspicion and abuse, and the line may often be scarcely traceable," may have been adapted to the days of small sailing-vessels, but is out of date and exceedingly dangerous in these days of steam navigation and high-power artillery. The full significance of this danger appeared during our civil war in the case of the *Alabama* and other Confederate cruisers built in British ports, and in the Treaty of Washington of 1871 Great Britain and the United States mutually bound themselves to a new doctrine in respect to such vessels,—the doctrine of the duty of the neutral to use due diligence to prevent the building, equipping or sailing from within its jurisdiction of any vessel which there is reasonable ground for believing to be intended for belligerent use (Treaty of Washington, Art. VI.). In the light of the Geneva award it seems likely that other maritime nations will hereafter observe the same policy of precaution.

Has not the time come for a further extension of neutral obligation? Would it not be reasonable to forbid by municipal law all trade with a belligerent in certain enumerated articles which are always contraband, such, for instance, as artillery, small arms, ammunition, and the like? It is now forbidden to the subjects of neutral states to go abroad with intent to enlist in belligerent armies or navies. It is also forbidden to the people of any civilized state to engage in fitting out within neutral jurisdiction an armed expedition against a friendly state. At one time both of these interdicted acts were lawful and customary. May we not now, in the interest of peace, make war still more difficult by cutting off the legal supply of all military stores from neutral states? Almost invariably the domestic resources of a belligerent are insufficient for the enormous consumption of modern war, and the war is kept up by money obtained from foreign investors, which money in turn is largely expended in the purchase of warlike material within foreign jurisdiction. If these belligerent means of supply should be cut off even to the extent of making illegal the pur-

chase of arms and ammunition abroad, we might be saved the spectacle of neutral states deploring the horrors of war which they see raging between neighbors, and yet busily and profitably pouring into the territory of both belligerents a constant supply of the most improved means of destruction. It then would become a neutral duty to use due diligence to prevent contraband exportation. Even now neutral governments may not sell contraband to belligerents. Why should private persons be permitted to do what their governments may not do?

It may be objected, and with justice, that it will be impossible wholly to enforce such a law, especially as between states which are contiguous. However, it by no means follows that a law which cannot always be enforced without violation is for that reason useless. That such a rule could be enforced to a large extent can hardly be doubted. Illicit trade in contraband could be made so dangerous that it would not pay. Smuggling is not unknown to the police of all nations, yet on the whole the practice is pretty well prevented. Military weapons and their ammunition, ships of war, torpedoes and mines, are of such character that it is not very difficult to trace them. It would surely be possible to prevent a large part of the mischief.

Again it may be suggested that such an extension of neutral duties would add to the advantages of states which are already rich and powerful, and would correspondingly add to the handicap already imposed on small states. This may be true. It is, however, only another way of saying that it is expedient to permit war in disguise. If a small state is deserving of aid against a large one, let the aid be open and aboveboard,—let the sympathetic state, in extending its support, itself incur the full risk of flagrant war. But if unwilling as a state to share in the war, then its citizens should not be permitted to do as individuals what their government does not wish to expose itself to the risk of doing officially. War between two nations should be confined to the two nations in question so long as other states do not see fit to intervene in arms.

It is true that there are always powerful commercial interests in neutral states which seek to derive profit from the needs of belligerents. No doubt such interests may make great gains,

which in turn give an impetus to many other forms of business activity. In this way war may be an immediate benefit to nations which avoid being drawn directly into hostilities. But such gains are temporary, and in the long run the destructive consumption which is the economic meaning of war must injure the industrial fabric of all Christendom. On the ground, then, of material welfare, as well as of humanity, war should be discouraged, and every step which makes it less easy to wage is to that extent an added deterrent. If the Hague Conference, meeting in the full light of the common interests of all nations, any one of which at any time may be either belligerent or neutral, can see its way to an international agreement which shall put the ban of municipal law on the sale to belligerents of the more dangerous forms of contraband, a long advance will be taken towards the preservation of the peace of the world.

COLONIAL POLICY WITH REFERENCE TO THE PHILIPPINES.

BERNARD MOSES.

The character of Spain's policy with reference to the Philippines as well as with reference to her other colonies was to a very great extent determined by her long crusade against the Moors. This struggle was part of the war of the Christians against the Mohammedans. The other part of it was carried on by the other European nations in Palestine. In the East the Crusades came to an end by reason of the waning interest of France, Italy, and Germany. These nations might cease from the conflict whenever they were weary of it without loss of territory or diminution of national honor. But the western wing of the Mohammedan force was within the borders of Spain. Therefore, although the struggle was ended in the East, Spain was obliged to carry it on single-handed in the West. For two hundred years after the last half-hearted crusaders of France had retired, Spain continued the war with unabated zeal, not merely to defend Western Europe from the Mohammedan conqueror, but to preserve her honor, to de-

fend her territory, to maintain her religion, and to perpetuate her national existence.

Thus Spain was kept in the war against the Moors. Seven centuries of conflict with a non-Christian people fixed the essential features of her character, and made her devoted to the forms and doctrines of the church. They made her intolerant; for difference of belief had for centuries been the real ground of her hostility to the Moors. The Spanish character, like the character of every other nation, is the result of forces not under the control of the national will. The Spaniards have not consciously and willfully made themselves conservative and intolerant. The nation has acquired its character as other nations have acquired theirs, by the force of their inheritance and environment.

The year which closed the Moorish wars was the year of the discovery of America. The experience of the nation had given it the spirit of a crusader, but with the overthrow of the unbelievers in the Peninsula, the Spaniards needed a new field in which to exercise their spirit. This was furnished by the then uncivilized inhabitants of America and the Philippines; and thus it happened that Spanish colonization partook of the character of a crusade. No instructions to the royal agents in the New World or in the Philippines were oftener repeated than those which enjoined these agents to keep especially prominent all those measures that would contribute to the conversion of the Indians and to their growth in a knowledge of Christianity.

In keeping with this general purpose, severe restrictions were imposed upon migration to the colonies, in order that unworthy persons might not have an opportunity to exert an evil influence on the native inhabitants. All persons newly converted from Judaism or Mohammedanism to the Catholic faith were forbidden to emigrate. The same prohibition applied to the children and grandchildren of persons who had been under the ban of the Inquisition, and also to the descendants of persons who had been burned at the stake or condemned for heresy. By this means it was designed to keep the Indians free from the influence of heretics and provide for their con-

version to the orthodox faith. And to make this prohibition effective heavy penalities were imposed upon persons who should in any way contribute to the violation of these restrictions.

Now that Spain has fallen from the relatively high position which she once occupied and her colonies have either become independent states or been brought under the authority of other nations, it is almost inevitable that her achievements should be underestimated; for failure in politics and war leads the world generally to think lightly of all the other products of a nation's activity. The political and military decline of Spain are likely to give rise to new and lower estimates of Spain's achievements in behalf of civilization, and it is quite possible that these estimates will be erroneous; that Spain in her weakness will not receive just credit for her great achievements in the days of her power.

It has in fact, already become fashionable to speak lightly of Spain's work in exploring and colonizing America and the islands of the Pacific. But this flippant judgment is not the final word respecting Spain's colonial policy. But we can hardly expect that the American will render a just revision of this judgment; for he is the historical antagonist of the Spaniard, and he has always found it difficult to appreciate the achievements of the Spaniards; partly because of political rivalry, and partly because of the wide divergence of their aims and the unlikeness of their national points of view. The Spaniard is conservative, while the American is radical. The Spaniard is polite, and attaches great importance to forms of speech and ceremonies in social intercourse. The American is unconventional in speech, and regards the ceremonious politeness of the Spaniard as the manifestation of a certain human weakness. The Spaniard is skillful in formulating rules and methods. The American is prompt in action. The Spaniard's power and facility in formulating laws is manifest in his colonial legislation, which is more completely unified and systematized than that of any other nation. The Council of the Indies that made the laws for the Spanish colonies provided a comprehensive code which was applied to every part

of Spain's vast possessions beyond the sea. The Supreme Court that was established in the Philippine Islands had the same form of organization as that established in Buenos Ayres or Guatamala. They were all created under a common law. And the municipal government that was set up in Chile was formed under the same law that determined the organization of the municipal governments in Mexico and the Philippines. The whole realm of Spain's colonial dominion was subject to a single body of laws which secured for all parts similar institutions and the same practical methods. It may be that the Spaniards brought less practical wisdom to their colonial administration than the English; but as general statements their laws were more complete than the English laws.

The most striking difference between the colonial policies of Spain and England relate to the control exercised by the two nations over their respective colonists and the colonial trade. All the ports of England were open to emigration to the colonies or trade with them, and the English authorities paid little or no attention to the character or standing of the person who proposed to emigrate. Spain, on the other hand, during the greater part of her colonial period allowed ships for her colonies to depart from only one port, at first the port of Seville, later the port of Cadiz; and the most rigorous scrutiny was exercised respecting the emigrants. The British colonist having reached America, was free to visit or reside anywhere in any of the colonies; while the Spanish colonist was required to announce his destination before sailing, and was required, moreover, to remain after his arrival within the district, or jurisdiction, indicated. Between the two policies there was the contrast of the largest liberty in the case of England and the most rigorous restriction and minute supervision on the part of Spain.

In estimating the results of Spain's influence in the Philippine Islands, we have to take into account not only the persistently benevolent intentions of the King, but also the uncontrolled malevolence of subordinate officers and irresponsible private persons. The King might design the well-being of the islanders, but if his agents had other designs, he was

powerless to carry out his intentions; for it must be remembered that during the greater part of the Spanish colonial period, the crown had only the most infrequent, and often indirect, communication with the Philippines. Until the early part of the nineteenth century the Philippine Islands were under the viceroy of Mexico; and the connection between these two parts of the vice-kingdom was maintained by a line of ships between Acapulco and Manila and the schedule of sailings was one ship a year each way; in fact, the trip from Acapulco to Manila and return lasted usually thirteen or fourteen months. There was no competition, for no other part of Spanish America might send vessels to, or receive goods from, the Philippine Islands.

Under this condition of affairs the local officers and private merchants might abuse the confidence of the King with impunity; and that they often did this is evident from such appeals to the King as that made by Domingo de Salazar, the first bishop of the Philippines. Having learned of abuses by the Spaniards, the bishop was moved by the hardships that befell the people, and informed the King, in order that these abuses might be removed. The people, he affirmed, ought to be feasted and favored, in order that they might become attached to our faith and understand the mercy of God in bringing them to a knowledge of it. In 1583 when the bishop wrote there were clearly two opinions respecting the manner in which the Filipinos should be treated, just as there appear to be two opinions now. The fact that such petitions and protests were made and presented to the King shows that the protesting party represented a state of public conscience not then usual among the nations dealing with the inferior races.

There is no doubt that many men found their way to the Spanish colonies whose purpose was rather to spoil than to convert the heathen. There is no doubt, moreover, that many men have made their way to the Philippines since they came under American authority who have more interest in making great immediate gains than in protecting the lives of the Filipinos or in rendering them secure in the possession of their property and their opportunities. But it is not safe in either

case to affirm that the persons who would spoil the weak represent the real designs of the nation to which they belong. Whether Spain's colonial expeditions and settlements were attended by more or less unprincipled men than the similar undertakings of other nations is a subject that at this point need not be minutely investigated. A more profitable inquiry concerns the specific influences exerted by the Spaniards for the promotion of civilization among the Filipinos; and probably no influences proceeding from the Spaniards were more important or more far-reaching in their civilizing effect on the Filipinos than those which resulted in making them a Christian people. It may be difficult to determine to what extent their conversion modified their fundamental race ideas, or to find out how far their thoughts about Christianity coincide with the thoughts of Western Christians on the same subject.

But whatever may be the truth about this matter, the Filipinos under Spanish influence became formally Christians, and the Church, in the course of the centuries it has dominated them, has impressed upon their minds a large number of practical ideas. Through the influence of these ideas the Filipinos have, to a certain extent, been turned away from the oriental point of view and made to see things as Spaniards see them. They have been brought with respect to many particulars to occupy the Spaniard's point of view. As the Spaniard, through long contact with the Moors and the infusion of a certain amount of Jewish and Moorish blood, has become something of an oriental; so the Filipino, through long contact with the Spaniards and the infusion of a certain amount of European blood, has become something of a European.

On their arrival in the Philippines the Spaniards found the people still under a tribal organization that apparently contributed very little to the preservation of order and peace; for, in the language of a contemporary account from the last half of the sixteenth century, "these people declare war among themselves at the slightest provocation, or with none whatever. All those who have not made a treaty of peace with them or formed with them the blood compact, are considered as enemies. Privateering and robbery have a natural

attraction for them. Whenever the occasion presents itself, they rob one another, even if they be neighbors or relatives." (P. I., V. III., p. 55).

Under the influence of the Spaniards in the sixteenth century a sudden change was made in the social condition of the islands. The Filipinos were led to acknowledge a superior political authority, tribal allegiance disappeared, and in the towns, as they gradually grew up, there was formed a nucleus of a more or less cultivated society that in the course of time acquired a certain European character. The schools that were established made a few of the young Filipinos familiar with subjects ordinarily presented in a European curriculum. When in the course of years young men desired more advanced instruction, they naturally went to Spain, and at the end of their studies returned to the islands thorough-going Europeans. They returned moreover, with an ambition to make the institutions of their native country more like those of Europe. They became lawyers and officers in the civil service and in both capacities they were instrumental in spreading among the people a knowledge of European law, on which the public administration was founded, and which had been adopted to fix the relations of private persons to one another. The civil law having been made the basis of the legal system of the islands, all persons in seeking to acquire a knowledge of this system were necessarily led to consider the social conditions in Europe in which this law arose. The law and the administrative system constituted thus the road by which the cultivated minds among the people were drawn back to the ancient source from which European nations have derived much of their culture and legal wisdom. The importance of bringing an oriental people under European law cannot be easily overestimated. It is a purely practical process, and in the case of the Filipinos it was an essential step in the development of a civilized society. The United States in entering upon its task in the Philippine Islands enjoyed the very great advantage of Spain's preliminary work to this end. The ancient traditions and institutions of barbarism had been set aside; the popular mind had conceived the idea of order under law; and the sense of political unity had been developed.

An important step, often an exceedingly difficult step, in preparing for the rise of a rude people to a higher stage of cultivation is the destruction of ancient social forms and prejudices. Without this preliminary work the reconstructive process is impossible. If you would rebuild a city and make it more beautiful, you must first clear away the ruins and ugly buildings that cumber the ground. If you would rebuild society and give it better institutions you must first clear the ground of such organizations and ideas as are incompatible with the execution of the new design. In case old institutions have become rigid by long continuance and are maintained by an uncompromising conservatism, the changes required to introduce a new and better social existence become difficult if not impossible. Caste as it appears in India furnishes a pertinent illustration. It has become rigid by continuance through a long period; it is upheld by a conservatism that is intensified by religious fanaticism; and it is entirely incompatible with the intellectual receptivity and free intercourse of progressive society. It presents an unwavering resistence to England's attempts to ameliorate the condition of the Indian people by the introduction of the ideas and new institutions that would contribute to the freedom, enlightenment, and general well-being of the people.

Obstacles like those presented by the system of Caste in India are not encountered in the Philippine Islands. The only strong tie of social union is the sentiment of loyalty to a family or to a personal superior. In the matter of social organization, the people are apparently ready for any new thing. The church has made its leveling influence felt; and not the least of the services it has rendered is that it swept away many old prejudices and traditions and habits, and left an unencumbered field on which new governmental organizations might be established and more enlightened communities developed. In thus clearing the ground for a new social structure and in leading the people to accept the practices of the church very important work was done towards preparing the Filipinos to take advantage of the opportunities presented to them under a liberal government and through a general system of public instruction.

The rule of the Spaniards has, moreover, left a marked effect on the personal character and bearing of the cultivated part of the Filipino people. The Spaniards are sticklers for form and ceremony in speech and conduct, and this quality they have communicated to the Filipinos. It is of course, easier for a barbarous people to acquire the forms than the spirit of civilized life. Through observing the forms however, there comes gradually an understanding of the spirit. As the Spaniards laid great stress on formal conduct, they were excellent masters in the first stages of the discipline that makes for civilization. Through them the Filipinos have attained a noteworthy distinction among the peoples of the Far East for their good manners and generally dignified bearing. As instructors and models in this department the Americans would have been greatly inferior to the Spaniards. The American goes to the islands as the representative of a superior civilization, but his personal superiority does not appear in his manners. In this respect the Filipino outranks him. The American, however, justifies his presence as a leader and a teacher in the islands by the fact that his mission begins where the mission of the Spaniards ended. The Spaniards taught the Filipinos the forms of enlightened society; the Americans are expected to give them an opportunity to acquire its open-minded, liberal, and humane spirit.

That the cultivated Filipinos under the Spaniards acquired somewhat of the spirit of civilized society as well as the form, is indicated by the position of woman in the islands. Nowhere in all the Orient is the position of woman better than in the Philippines. Among the non-Christian Malays she is degraded by polygamy and slavery. In China those who are especially favored are as irrationally treated as those who are found at the other extreme of the social scale. In the Philippines woman is neither a useless ornament nor a beast of burden, but a rational being standing by her husband and contributing her part in the struggle for existence. Even when the struggle has ceased to be hard, she does not appear to be disposed to renounce all effort and all responsibility. She is willing to make sacrifices for her own education, but as

yet her opportunities have not been commensurate with her ambition. Under the new regime many who expect to be teachers are attending the normal schools, and give promise of being able to render valuable assistance in maintaining and developing the efficiency of the public schools. The ordinary Filipino woman has a liking for trade. She appears to have less vanity and more business sagacity than her husband. In the more fortunate social circumstances her bearing is such as to suggest better opportunities and a wider experience than she has actually had. Like the women of Southern Europe, the women of the Philippines are attached to the church, and through its influence have been brought into a position quite different from the traditional position of the oriental women.

But in order that an exaggerated impression of the extent of the Spaniard's Europeanizing influence may not be conveyed, it is necessary to recall the fact that this influence was limited by the Spanish policy of communicating as much as possible with the Filipinos in one or another of their own dialects; for wherever the native language was used there was a strong probability that the Spaniards would descend to the Filipino's plane of thought instead of lifting him to the European's conception and point of view. The Filipinos who were to any considerable extent Europeanized were those who became familiar with the Spanish language, and thus had access to European ideas. The Filipinos who never knew Spanish remained, except in rare cases, without much knowledge of Europe or sympathy with Europeanizing reform. Therefore, in discouraging the Filipinos from learning Spanish, as was extensively done under the old regime, the Spaniards positively limited the influence which might otherwise have proceeded from their presence. So effectual was this discouragement, or so few opportunities for learning the language were offered, that, after an occupation of three hundred and fifty years, less than ten per cent. of the inhabitants were able to speak Spanish. It is this limited number that we have in mind when we speak of the civilizing influence of the Spaniards on the Filipinos.

The influence of the Spaniards was further limited by the fact that they never thoroughly mastered the country. In

many parts, instead of building roads that would penetrate the interior and open the lurking places of the brigands, they were satisfied to remain on the defensive. Failing to make their force recognized everywhere, the ruder inhabitants of the unexplored and unconquered regions acquired a certain contempt for the civilized man, regarding him as a weakling and as consequently unworthy of imitation; for the first step necessary to make the barbarian accept the ideas of civilization is to let him know that the civilized man is his superior in physical force. To smite the barbarian with a heavy hand is sometimes the surest way to liberalize his mind. This the Spaniards did not always do when it ought to have been done, and consequently there remained, after centuries of nominal control, vast regions where neither the Spaniards nor the civilization which they represented were respected, and where there was no disposition to accept their ideas.

Furthermore, the frequent departure of the Spaniards from the economic practices of modern Europe in dealing with the Filipinos delayed the acceptance of those ideas which constitute the basis of modern society. In the islands much was done under the Spaniards by forced labor at a time when practically all laborers in Europe were free and received wages. Considering the relations of the two peoples to one another, it was inevitable that the Filipino should regard the Spaniards as his teachers, but what he gained from the object lesson in this case was knowledge of a state of things that was not characteristically European, but rather characteristically oriental. But in the course of time a new age dawned. The crusading spirit became antiquated; feudalism survived only as a relic of a receding past, the union of ecclesiastical and political functions in a single body was repudiated; and it was clearly seen that Spain, which had stood for these things, had finished her mission.

In the fact that Spain's mission as a colonizer and a ruler of inferior races is ended, and that the tasks she had undertaken have fallen to other nations, we observe one of the familiar incidents in the development of civilization. In the course of intellectual progress it is not unusual for one person

to take up and carry forward to a higher form or to a more complete stage an invention or a theory of a predecessor. In the history of material achievements nothing is more common than to find one company of men taking up and finishing an undertaking begun by others. And as we grasp within our view the social progress of the world, nothing is more consistent with reason and historical fact than the idea that great national undertakings may be originated by one nation and subsequently be taken up and carried to a higher stage of advancement by another nation; or, in other words, that one nation makes one contribution to civilization while another nation makes quite a different contribution.

And thus, although we recognize the zeal and heroism displayed by the Spaniards in discovery and exploration, and keep in mind their high purpose to bring to the heathen an uncorrupted faith, it may be reasonably expected that, with less of the crusader's spirit, but with more practical sense, the newer nation will carry Spain's unfinished work in the Far East to a conclusion which the stereotyped conservatism of the older nation made it impossible for her to reach.

But it is frequently affirmed that the people of the United States are new to questions relating to the government of dependencies. The truth is, however, that more than a century ago they had very positive ideas as to how certain colonies should be governed. This was, in fact, the first subject on which they held a common opinion. A little later, after the several states had ceded to the federal government their western lands, they had an opportunity to put their ideas into practice.

In the continental territories of the United States it was expected that the aboriginal inhabitants would disappear and no account was taken of them in forming the organic laws of the Territories. But in Porto Rico and the Philippines it could not be presumed that they would disappear, and they could not be ignored. In the continental Territories the government was formed for the descendents of Europeans; in the Philippines it was made primarily for Filipinos, but at the same time it had to be so ordered as not to do violence to the interests of the

other inhabitants. It had to be ordered, moreover, in such form that it would not do violence to the fundamental principles on which this republic was established. The two most excellent models of European rule over dependencies peopled principally by races in a lower stage of civilization were furnished by the colonial possessions of England and Holland. But there were various reasons why neither the English nor the Dutch policy could be exactly followed. The Filipinos are Christians, and a small part, but a dominant part, of them have been to a certain extent Europeanized under the influence of the Spaniards. As a necessary result of their conversion to Christianity and their association with Europeans, they had certain aspirations that distinguished them from the non-Christian branches of their race. A certain infusion of European blood, moreover, emphasized the results of the Europeanizing reform. The people of the Philippines were, therefore, in a position where a decent regard for their ambition and achievements made it advisable to carry out some other than the repressive policy that had characterized the Dutch administration of Java. The contrast between the conditions of India and the Philippine Islands, India's vast population, her rich and powerful native princes, her indigenous civilization, with its wealth of literature and traditions and social institutions, made it undesirable to imitate strictly in the Philippines the policy that has been found necessary in India. The problem presented by the conditions in the Philippines was simpler than the Indian problem, and the difficulties that had to be overcome arose from a different source. The difficulties encountered by the English in India arose in large part from the complexity and rigidity of the native Indian society. The difficulties encountered by the Americans in the Philippines arose largely from the chaotic condition of Filipino society, the absence of social organizations of a high grade and the lack of traditions of order. The cases were different and required different methods of treatment. There were better reasons for building on Spanish foundations than for borrowing a system from either Java or India.

Under the actual political organization of the Philippine

Islands the government of the United States is the source of power exercised by the central, or insular, government. Immediately after the American army landed the military authorities took possession of the civil offices within their lines, collected the internal revenue taxes and customs duties, and executed such laws relating to civil affairs as were valid at the close of Spanish rule. As commander-in-chief of the army the President took steps to enlarge the scope of the civil offices and to bring the islands under civil authority as fast as the inhabitants could be pacified. To this end, and acting still as head of the army without special congressional authorization, he appointed the United States Philippine Commission, in March, 1900, "to continue and perfect the work of organizing and establishing civil government already commenced by the military authorities." After the first of September, 1900, this commission had authority to exercise, subject to the President's approval, legislative power in the Philippine Islands. This power prior to this date had been held by the military governor. It included "the making of rules and orders having the effect of law, for the raising of revenue by taxes, customs duties, and imposts; the appropriation and expenditure of public funds of the islands; the establishment of an educational system throughout the islands; the establishment of a system to secure an efficient civil service; the organization and establishment of courts; the organization and establishment of municipal and departmental governments, and all other matters of a civil nature for which the military governor was formerly competent to provide by rules or orders of a legislative character."

The next step in carrying out the policy of the United States with respect to the Philippine Islands was that in which the President directed affairs not as the commander-in-chief of the army, but as authorized by definite congressional action. The action taken by Congress in this matter was essentially the same action as that which had been taken in the case of Louisiana. By a law approved in October, 1803, it was provided that, until Congress should have made provision for a temporary government, all the military, civil, and judicial

powers then exercised by the officers of the government of Louisiana should be vested in such person or persons and should be exercised in such manner as the President of the United States might direct. The language of this act of 1803 was repeated in a law passed ninety-eight years later, approved March 2, 1901, giving the President congressional authority " for the establishment of civil government and for maintaining and protecting the inhabitants of the Philippine Islands in the free enjoyment of their liberty, prosperity and religion." This was the Spooner amendment to the army appropriation bill for 1902. By it Congress ratified the established authority, but at the same time imposed certain restrictions, particularly with reference to granting franchises.

The next phase of the insular government was introduced by the change effected July 4, 1901, through which the executive authority previously exerted by the military governor in the Philippines was transferred to a civil governor. A little later four executive departments were created: the departments of the interior, of commerce and police, of finance and justice; and of public instruction. The president of the commission having become the civil governor, the four other original members of the commission were appointed, with the title of secretary, to be the heads of the four executive departments. The governor and the four secretaries continued to act as members of the commission, which was at this time enlarged by the addition of three Filipinos, and one of the secretaries was appointed vice governor. The vice governor may act as civil governor whenever the civil governor is incapacitated by illness, or certifies that his temporary absence from the seat of government will make it necessary for the vice governor to perform the duties of the civil governor. Under the several secretaries are grouped the various bureaus through which the work of the departments is carried on. The head of each bureau in a department reports to the head of the department to which he belongs.

The present government thus embraces a civil governor and four secretaries who, with the three Filipino members of the commission, constitute the central legislature. To these offices

may be added the office of the Attorney-general and the system of the courts embracing the Supreme Court, the various courts of first instance, and the local courts such as the municipal courts and the courts of the justices of the peace.

In most cases the Supreme Court of the Philippines has final authority, but there are cases that may be carried to the Supreme Court of the United States. These are all actions, cases, causes, and proceedings in which the constitution or any statute, treaty, title, right or privilege of the United States is involved, or causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars is involved or brought into question.

In establishing local governments, the boundaries of the ancient pueblos, or townships, were recognized as determining the territories of the new municipalities. The ancient names were retained, and the public property of the old pueblos passed to the new organization. In the municipalities, or townships, the first steps were taken towards the establishment of local self-government. The president, the vice-president, and the members of the municipal council are elected. But in view of the limited knowledge and experience of the bulk of the inhabitants, it was found to be expedient to confine the privilege of voting, in the beginning, to a comparatively few persons. It was confined to those who had held some one of the principal municipal offices prior to the American occupation, those who had property valued at five hundred pesos, or who paid taxes to the amount of thirty pesos, and those who could read, write, and speak English or Spanish. It might happen that many of those who had property worth five hundred pesos or who had previously been municipal officers could neither read nor write Spanish or English. But it was held that their ability to accumulate property, or their previous experience in local government would make it safe to confer upon them the privilege of voting for municipal officers. By granting this privilege to the limited number of persons who had the qualifications required, an opportunity was given to the people to acquire the first elements of the knowledge necessary to enable

them to govern themselves. This provision was in marked contrast with the law established in Porto Rico and Hawaii, which conferred the highest privileges of citizenship alike upon the fit and the unfit. By this action respecting Porto Rico and Hawaii the authorities threw away whatever influence they might have exerted by holding out this privilege as an inducement to the people to make themselves worthy to participate in the local government. By thus bringing into the government a vast mass of uncontrollable ignorance, the new administrations in those islands began in confusion and with the prospect of achievements that would not constitute a favorable recommendation of republicanism. If more Filipinos acquire and hold property or acquire a knowledge of English or Spanish, this will indicate a certain social improvement that, in accordance with the law regulating the suffrage, will be followed by an extension of political rights to other persons; but if no such improvement shall be observable the welfare of the local communities will not be endangered by the presence and authoritative interference of ignorant and shiftless Filipinos in public affairs.

Like many of the present townships of New England, the pueblos in the Philippines often contain more than one village, but each of these villages, or barrios, has a certain territory which is recognized as pertaining to it, and the sum of all the tracts of territory pertaining to the several barrios coincides with, or is the same as, the territory of the pueblo or township. Each barrio is in the immediate charge of a member of the town council, but the township and not the barrio is the primary political unit. The town is the lowest distinct governmental group; for the barrio is simply a fraction of the pueblo, or town.

Midway between the municipal government and the central government of the archipelago stands the government of the several provinces. When the provinces one after another were turned from war to peace, it became necessary to have at hand a form of govenment under which they might be organized. This form was furnished by the general provincial government act adopted in February, 1901. In accordance

with this act the provincial government consists of five officers. These are a governor, a supervisor, a treasurer, an attorney, and a secretary. The governor, the supervisor, and the treasurer of the province make up the provincial board. The attorney and the secretary are not members of the board, but perform their proper functions in connection with the affairs of the provincial government. The governor in the first instance, that is to say on the organization of the provincial government, was appointed by the commission; later he was elected by a provincial assembly, or electoral college, composed of the members of the town councils of the organized municipalities of the province. It is expected that ordinarily the provincial governor will be a Filipino, although at the organization of the several provinces a number of the appointed governors were Americans, and some Americans were elected by the provincial assemblies at the expiration of the term of appointment, still, under a normal condition of affairs, it may be expected that the governors of provinces will be Filipinos. The supervisor is required to be a civil engineer, for upon him devolves the business of building roads and bridges and the other public works of the province. But the supervisor and the treasurer are in the classified civil service, and it is expected that for the present until properly qualified engineers appear among the Filipinos they will usually be Americans.

After the general provincial law had been formed embracing the general outlines of a provincial government, there remained the task of applying it to the several provinces, with such modifications as might be needed in the different circumstances. This task made necessary a journey to each of the provinces, for the purpose of finding out by inquiry and discussion with representatives of the people in a public assembly what modifications of the general law were needed to adapt it to the province in question. Inquiry was also made as to what salaries ought to be paid to the provincial officers, and what limits ought to be fixed for the other provincial expenses. The provincial assembly that was consulted about these matters was composed of delegates from the several towns of the province. The delegates were usually the presidents of the

towns and the members of the town councils. They were the most cultivated part of their respective communities.

Of the five provincial officers only the governor is elected; the others are appointed. The governor is elected by an assembly composed of the members of the town councils of the province. By providing that the official head of the province shall be elected by a system of indirect election resting on the limited suffrage established in the municipal code, it is thought that the people will be secured a certain participation in public affairs, and that the stability and wise conduct of the government will not be endangered by the too immediate interference of the untrained part of the population. Placed in intimate connection with the central government by the fact that the bulk of its officers are appointed, the provincial organization is in a position to serve as an efficient administrative agent of the central authority, as well as to fulfill its functions as a purely local government.

It may be seen from the statements already made that, under the present governmental organization, there are two groups of elected officers. The first group embraces the municipal officers, who are chosen at large by the qualified electors of the municipality. The second group of elected officers embraces the governors of the several provinces, who are elected by provincial assemblies composed of the members of the town councils of the various towns in the several provinces. The second election thus depends on the first, and the first is made by a restricted list of voters who must either have property to the value of five hundred pesos or pay at least thirty pesos of regularly established taxes, or be able to read, write, and speak Spanish or English, or have held a municipal office under Spanish rule. These qualifications are established by law to be the qualifications of the elections who shall choose the members of the proposed Philippine assembly that is to be convened and organized two years after the completion and publication of the census recently taken.

A government for the Philippine Islands has thus been established, and all but a few stragglers have returned to the occupations of peace. The stragglers are products of the re-

bellion against Spain and the United States, who fancy that in war they learned the trick of living without work at the expense of their neighbors. They are brigands, and, in terms applied to our evil-doers, would be described as a cross between a sneak-thief and a footpad. In view of the lawlessness that appears to be increasing in this country, it may be safely affirmed that brigandage is less ominous in the Philippines than in the United States. The Philippine brigands are the half-civilized elements of the population. They have no strong traditions of social order. They have had no experience to teach them respect for law. They have lived under a system that was monarchial from top to bottom. Whatever obedience they have rendered has been rendered to the command of a personal superior. The new régime substitutes law for the personal ruler. The change is a little too sudden for the ordinary Filipino, particularly for the Filipino with an extravagant idea of liberty. He has none of that training which enables the Anglo-Saxon to feel loyalty to the impersonal state, and render obedience to its impersonal decrees. It is only natural, therefore, that under these circumstances the ignorant and vicious fragments of the population should manifest the characteristics of barbarism rather than those of civilization. But there is no such excuse for the American brigands, those who are breaking down our jails, defying the authority of courts, and torturing their fellows. We cannot even charge these acts of lawlessness to recent immigration from the lower ranks of European nations, for the mobs of jail-breakers, lynchers, and the bands of highwaymen are predominantly of American stock. They are born and bred under the free institutions of the land they are disgracing.

The Filipino brigand may have been encouraged by the utterances in this country that helped to keep the belated insurrectos going, but this influence on him has probably been very slight; for he is not a politician, but simply a plain robber, and has no aspirations higher than successful plundering. Filipino brigandage does not, however, present any serious danger either to the lives or property of Americans.

Even Filipino brigandage has had its uses. It has furnished

the Philippine Government an opportunity to test the reliability of its constabulary or local militia. This arm of the government is composed of enlisted Filipinos under American officers. It embraces between five thousand and six thousand men, who are distributed throughout the provinces. The presence of lawless stragglers in the country gave the constabulary something to do immediately on its organization, which made strict discipline necessary and possible. Five thousand armed idlers scattered throughout the islands, without any serious occupation, might very readily have become demoralized. But by having occupation, the officers have been able to hold them to strict discipline, and thus set a high standard for the whole force. This standard once fixed becomes a part of the tradition of the constabulary, and may without great difficulty be maintained.

At first doubts were entertained by certain persons as to the advisability of arming so many natives, but their conduct has been generally such as to leave no apparent ground for these doubts. They have been loyal to their officers and to the government. They have been efficient—for the particular task in hand quite as efficient as the American soldiers. The American soldier is to a certain extent handicapped as a brigand-hunter, in that he does not know the tricks and habits of the Filipino thief. The attempts which the Americans are making to eliminate brigandage is a departure from the Spanish régime. The Spaniards winked at many things, and among others the presence of bands of thieves in certain centers of lawlessness. From these centers whole districts became infected. The process carried on by the constabulary is a cleaning-up process, and promises to leave the islands, for the first time in their history, free from the bands of thieves that have always been more or less of a hindrance to prosperity.

Like Mexico and other former colonies of Spain, the Philippines had not adopted the land-tax as a means of raising revenue. This was consistent with the other features of the system of taxation prevailing in the islands, in that it favored the rich and burdened the poor. Speaking generally, under

the old system of taxation, whatever articles were owned or exclusively used by the rich had a lighter tax than those owned or exclusively used by the poor. Champagne, to take a single illustration, bore a lighter tax than cheap wine. In Mexico for a long period the government was practically an oligarchy, composed in large part of landowners, who either determined what the taxes should be or had sufficient influence to prevent the imposition of a tax on land. In the Philippines, also, a limited class of relatively rich men had exerted on the government whatever influence had been exerted by the people or by those not actually in official positions, and it seemed to them wise, or at least advantageous, to use whatever power they had to cause any tax levied to be placed where it would burden them least. On one occasion, at a public meeting in one of the provinces, advice was sought as to the best methods of increasing the revenue, and the deliberate plan proposed by some of the speakers was that the government should levy a tax on the proletariat. The Filipinos had learned their lesson from the old régime.

In view of this state of things, it became evident in the beginning that it would be necessary to make a complete reformation of the system of taxation, and that this reformation would have to concern itself both with the internal revenue taxes and the customs duties. In making the changes required, it was proposed that the new system should at least not bear more heavily on the poor than on the rich. The principle adopted appears to us to carry with it its own advocacy, but it was not so clear to those who had inherited their ideas of financial policy from Spain.

The excuse or justification for the new tariff law was the need of an adequate revenue for the maintenance of the government. The *cedula tax,* or graduated poll-tax, had been abolished, no land-tax had been imposed, and the internal revenue tax brought only limited returns. As a consequence of years of rebellion, the trade and the industries of the smaller towns in so far as the smaller towns ever had any industries, were either disorganized or destroyed. The contributions made for the support of the rebellion, whether

free or forced, had impoverished a large number of the inhabitants of the provinces, and the only effective source of an adequate revenue, at the beginning of the American occupation, was the customs duties. The duties, therefore, which were established by the new tariff law were established primarily for revenue. The idea of protection was only incidentally considered. There were, in fact, very few industries to protect that had not adequate protection in the conditions under which they existed. In making the tariff law, then, only a few objects were kept distinctly in mind. In the first place, it was designed to yield a respectable revenue. In the second place, it was proposed that it should not be burdensome to the trade or unduly raise the price of articles to the consumers. In the third place, it was planned to be easy of execution, so that collections might be made under it with the least possible expense and with the least possible liability to fraud. The ends aimed at by the makers of the law have been fairly well attained. It has yielded a respectable revenue. That the law might not be burdensome to trade or increase unduly consumer's prices, it was designed to make the average rate on imports about twenty-one or twenty-two per cent. of their real value. Since the duty is primarily a specific duty, this rate, expressed in terms of an *ad valorem* duty, will naturally vary as the goods imported are of high or low grade in their class. Whenever the specific duty is the same on cheaper and dearer goods, the dearer goods have an obvious advantage in importation. But in all cases where classes are distinctly recognizable, each class has its distinct specific duty. The duty was made primarily specific, because such a duty may be more easily levied and collected than an *ad valorem* duty, and it is exempt from the liability to fraud through undervaluation or overvaluation.

Recognizing the necessary inaccuracy of a system involving only specific duties, provision is made in many instances for resorting to an *ad valorem* duty as a corrective of possible cases of injustice.

In certain cases where the rates under the new law are the same or less than under the old law, some importers who have had experience with both laws find the new law is more severe

than the old, on account of its more rigorous execution. From their point of view a law imposing a higher rate of duties is more convenient in practice than a law imposing a low rate, provided the law imposing the higher duties can be made easy by gifts and bribes. Better a high tariff with *gratificaciones* than a low tariff that is carried out with rigid and unsympathetic honesty.

Not the least important matter of policy connected with the affairs of business that has engaged the attention of the Philippine government is the forest of the islands, and regulations for their care and economic use.

In order that the magnificent forests of the islands might not be suddenly and irretrievably destroyed, and that at the same time they might be rendered serviceable, they were committed to the administration and supervision of a bureau of forestry. The lands of the forest belong in very large part to the government, and for this reason their control is in the hands of an authority that may deal with them freely without becoming entangled in the meshes of individual rights.

In the policy adopted with reference to the forests, two or three points are conspicuous. The first of these is, that forests are not sold to the individual persons or corporations who have only the single interest of denuding the lands on which they stand. The second of these points is, that the government in retaining the land necessarily retains the power to determine what trees may be felled and what must be left standing without injury. The third point is, that the person who receives a permit to cut designated trees must pay to the government a certain amount per cubic foot of the trees felled, this amount varying according to the quality of the timber in question. This means that the Philippine Government sells the timber standing, at a price fixed according to its quality, and retains the ownership of the land and controls and cares for all subsequent growths. By this method it is expected that the devastation of the forests will be averted. At the same time dealers in timber will be able to secure at reasonable rates the trees best suited to their purposes, but under the direction of the proper authorities as to what immature trees must be left standing.

If one were to attempt to make a comprehensive statement of the economic *status* of the Philippine Islands, it would not be difficult to form a fairly just estimate of the several material elements. But a considerable difficulty would arise in attempting to estimate the labor force of the islands as a necessary factor in the general statement. On this point the government has manifested an uncertain and doubtful policy. It is uncertain because as yet no one knows what is to be the result of the awakening of the Filipinos out of their mediævalism. The bulk of the population is composed of persons who either cultivate independently their small holdings or are attached to other persons in a traditional relation not greatly unlike that of feudal dependents. The part of the population that is neither in the position of individual cultivators nor attached to any household or estate is small, and consequently the number of laborers actually available for a new undertaking is limited. Persons who have been accustomed to gain their living in a certain way cannot be expected to abandon their ancient habits, their traditional dependence it may be, immediately on the appearance of a person or company asking for their serivces. In view of this fact, it is probable that those who present themselves at the first call under the new demand are only a part of the supply of labor which the community in question may furnish when it shall have adjusted itself to the new conditions. It will therefore be impossible to know the labor capabilities of the Philippine Islands until they shall have acquired more of the characteristics of the industrial communities of Europe and America. But there is a strong probability that the Filipino labor force will increase as the sense of individual independence increases and more men break away from their positions of semi-dependence on their employers. But this movement of the Filipino towards the position of the American laborer will probably be slow, and in the mean time there ought to be a demand for more laborers than are at present available. To this point it is safe and easy going. What lies beyond is a rough road of diverse opinions.

As it regards the continental territory of the United States, it is not difficult to frame a more or less convincing argument in

support of the policy involved in the law excluding Chinese on the ground that the inconvenience of getting rich more slowly is not to be compared with the inconvenience of having another race problem on our hands. But when the inquiry relates to the Philippine Islands the conclusion that applies here does not necessarily apply there. Here it would be bringing together two alien races, the two most positive and strongest races in the world, that it would be better to keep apart. There it would be bringing together, not two races, but two kindred peoples, of whose amalgamation nature seems to approve. But whether they enter into close association or remain distinct is not a matter of great moment. The undisputed fact is, that there is room for more laborers in the Philippine Islands to redeem the country from the results of the neglect it suffered in war, and to make available its vast undeveloped resources. If there were only limited resources, the weaker might go to the wall, but the resources are adequate to the support of a population of sixty millions. The addition, therefore, of a few hundred thousand Chinese would drive nobody to the wall, but by making the islands more productive, would ameliorate the condition of the whole increased population.

If under tutelage and the force of example the Filipino shows himself a willing and skillful worker, and the resources of the islands are so completely used as to demand no more laborers, the door may be as easily closed against the Chinese after five or ten years as now. The painful fact now is, that labor is needed and is not to be had.

Hitherto, on this continent, we have established governments in which those who made the laws have had the same ideas, instincts and traditions as the body of the people for whom the laws were made. Only members of our race have been involved. In the new undertaking we have sought to bring into political co-operation members of two distinct races; and those persons who have expected such immediate results as might appear in dealing with a branch of European stock have failed to take into account the mutually repelling force of diverse racial inheritances. They have failed to estimate properly the difficulty the subordinate race is destined to encounter in com-

prehending the ideas and social principles of the dominant race, and also the difficulty it will experience in changing its point of view with respect to government and annulling somewhat the force of its ancient social traditions.

An important feature of the governmental policy carried out in the Philippines is that which embraces the system of public instruction. The system is organized as the bureau of education under the Secretary of Public Instruction. The immediate administration of the affairs of this bureau is placed in the hands of a general superintendent, who was originally assisted by ten division superintendents. The division superintendents reside in the several divisions. Under the supervision of the general superintendent, each division superintendent exercises immediate control over the schools of his division. With the increase in the number of teachers and the expansion of the field, the division superintendents could not properly perform the work expected of them. Then by an amendment enacted July 24, 1901, the number of division superintendents was increased from ten to eighteen. Under this organization nearly one thousand teachers from America were appointed and assigned to positions in different parts of the archipelago. In this work of placing the teachers where they were most needed the division superintendents rendered valuable assistance to the general superintendent. They made themselves familiar with the conditions of their several divisions by systematic investigation and personal inspection, and were authorized to select from the teachers already appointed, subject to the approval of the general superintendent, such teachers as seemed to them best fitted to establish and conduct schools in the different parts of their several divisions. In the course of time the work required of the division superintendents became too great to be successfully performed by them without assistance. The number of teachers was greatly increased, and the schools were scattered over a wider territory. It became finally evident that a sufficient amount of information concerning the conditions in the different parts of the islands had been gathered to permit the making of a definite and final organization. Accordingly a bill was presented to the Commission with the view of effect-

ing the changes desired. This bill became a law October 8, 1902. This law repealed certain features of the previously existing school law, and divided the archipelago into thirty-six school divisions. The several divisions except in a few cases, were made to coincide with the provinces. In each of these divisions, except those corresponding to the provinces of Benguet, Lepanto-Bontoc, Nueva Vizcaya, and Paragua, a regularly appointed division superintendent was provided for. In each of the four provinces excepted it was provided that the provincial governor should act, without additional compensation, as division superintendent. This arrangement is justified by the fact that in Benguet, Lepanto-Bontoc, and Nueva Vizcaya the majority of the inhabitants are Igorrotes, living in a semi-savage state while the province of Paragua embraces a large area of the western islands and contains only a limited and scattered population. Assistance in carrying on the office work of the division is provided for by authorizing the appointment of one clerk for each division superintendent. In addition to the teachers appointed for the municipalities by the division superintendent, whose salaries are paid by the municipalities, the general superintendent is authorized to keep in the service of the insular government a force of one thousand trained teachers for the primary schools and such additional trained teachers as may be necessary for the provincial schools of secondary instruction.

In providing this organization and emphasizing the work to be done through it there is clearly a departure from the policy pursued by some of the European nations. The Javanese are made to understand that they are not expected to have a large part in the cultivation of the people dominating them. Few opportunities have been provided for them to acquire the training necessary to enable them to occupy more than a very limited number of the economic positions in the dependency; and thus, instead of being prepared to constitute a complete social body, they are relegated by their educational limitations to a few of the lower occupations. They remain a separate class, a mere fragment of a society. Under the American policy with respect to the Philippines, it is proposed that the Filipinos shall

not be merely cultivators of rice or the bearers of burdens, but that they shall be furnished with all the facilities for education of which they can make advantageous use; and it is expected that intelligence rather than ignorance will render them contented in their present political relations and strengthen their allegiance to the constituted authorities.

COLONIAL AUTONOMY, WITH SPECIAL REFERENCE TO THE GOVERNMENT OF THE PHILIPPINE ISLANDS.

PAUL S. REINSCH.

The historical conditions surrounding the acquisition of the Philippine Islands by the American government were of such a nature as to give rise to a very definite and peculiar legislative policy. The colonial expansion of other nations has usually followed up commercial or other economic enterprises, and therefore has generally been dominated only in a secondary manner by political considerations. In the imperial expansion of France, it is true, political motives predominated to a larger extent, and we shall therefore be prepared to find a certain similarity between American and French colonial methods. It was a political motive,—the desire to weaken the prestige of Spain,—that led the American government to make an attack upon Spanish dominion in the Philippine Islands, at a time when the American nation had as yet no economic interests in the archipelago, the foreign commerce of which was in the hands of Chinese and Europeans. It was also primarily for a political purpose that the islands were ultimately retained, as it was felt that they would assure the United States a position of leadership in the settlement of the Oriental and Pacific questions. Another motive was the desire to exclude any other power which might wish to take advantage of a renunciation on the part of the United States. When the islands had thus been acquired, the public conscience was somewhat disturbed, especially as a stubborn and far-spread native opposition had to be put down by force of arms. It was therefore

found necessary to develop a constructive policy which would satisfy, to a certain extent, public opinion at home as well as the claims of the more ambitious political class in the Philippine Islands. As public opinion was aroused, it was necessary to act rapidly; therefore, it did not seem advisable to take time to study carefully the local conditions of the islands and to allow the local institutions to develop gradually according to the laws of inner necessity. What was needed was a complete and definite program of social and political reform, which would appeal to public opinion at home as entirely adequate to solve all difficulties. It is very natural that under such conditions the program actually adopted was not based upon the characteristics of Philippine society and its organic needs, but rather upon the political ideals and aspirations of the American republic. Every nation considers its institutions best, and in their expansion it readily sees the bestowal of a benefit upon races less fortunately situated. Nations have very little sense of historical perspective in their own affairs, they lack it entirely in dealing with the affairs of other peoples and races. The constructive policy adopted and since pushed with great vigor was therefore based on American precedent, and constituted an attempt to assimilate native institutions to American ideas. Our form of territorial government was used as the model for institutional construction, and though the municipal and provincial system preserved some elements of the Spanish régime, American ideas controlled entirely in the creation of the assembly with its system of numerical representation and popular election. The American system of education was introduced, the public administration in all its branches was modelled upon that of the American commonwealth, and even the economic policy—including the questions of the labor supply, of the land system, and of the commercial policy,—was based upon American experience. But while all these measures tending toward assimilation were adopted, it was by no means our purpose completely to assimilate the Philippine population and to make them members of the American national republic by giving them the rights of American citizenship and of statehood. Stopping short of this extreme in assimilation

policy, the government proclaimed that it was its purpose to educate the Filipino people for self-government and autonomy; and in the latest authoritative expressions concerning our policy, the aim indicated is that of establishing relations similar to those which now exist between the United States and the Cuban Republic.

When we consider the actual meaning of the term "self-government," or "autonomy," it will be clear that the policy of assimilation and of autonomy are opposites. Autonomy means the self-determination of a society,—the freedom to develop those customs and institutions which spring naturally from its ethnical characteristics and from the social and economic conditions under which it lives. The form of autonomy varies according to the requirements of a given society from systems of authority like those of Japan and Germany, to systems of democratic organization like that of the United States. In history we have no example of the autonomy of one nation being created by the efforts of another and no nation has as yet successfully determined the social evolution of another race by conscious political methods. The populations with which Rome came in contact were completely assimilated after the acid of the Roman spirit had dissolved their native political systems. There does not seem to exist a satisfactory standing-ground between the dissolution of a native civilization which is to be assimilated to a more powerful society, and the recognition of the independence of local development. Whenever, therefore, assimilation is held to be impossible on account of racial differences, it is generally considered a wise policy to avoid measures of pseudo-assimilation which can only have the result of unsettling the native social life, without raising it effectually to a higher level. British colonial policy is based on this fact, and in India political action is confined to purely economic and legal activities, while the social and religious life of the population is not interfered with. But the United States in the Philippine Islands has made an effort to combine these two policies and to educate the Philippine nation towards autonomy by imposing upon it an alien system of institutions. It is not difficult to see that the his-

torical development of the American nation would naturally lead to just such a result. Our national experience has led us to believe in the power of institutions to assimilate racial elements of great diversity. It has been the most characteristic element of our civilization that we have freely invited the races of Europe to come to our shores and to participate in the national life of our country; nothing causes us greater satisfaction than to see the ready assimilation of Hungarian, Jewish, and Italian immigrants, and especially do we love to hear of their intelligent use of our institutions. We are therefore disposed to value very highly the assimilative or civilizing effect of institutional framework, and are apt to forget that after all the people that have come to us from Europe have been intimately connected with us through prior civilization and that they have been prepared in their ways of thought and their ideals to accept our institutions and to appreciate their spirit. A very different part of our national experience has been supplied by the negro question and Chinese immigration. The former has by this time taught us the lesson that deep racial differences cannot be bridged over by political institutions, and that the slow process of economic development is necessary to bring up a race to a social condition where the institutions of a highly individualized system can be advantageously applied. Socially, the American people feel a greater contempt for the colored races, including the yellow race, than any other nation, and while the assimilative power of our institutions is constantly emphasized, the social attitude of the nation is one of the greatest exclusiveness towards people who are not near of kin to us. We are willing to give the Filipinos our institutions, but we recognize that we shall not be able to make Americans of them so as to be willing to allow them to share in every respect in our national life. The result, therefore, is a policy, which while establishing our institutions in the dependency, would confine the Filipinos to a special and subsidiary position in the life of the American empire. With the avowed purpose of educating the Filipino for self-government, we have imposed a complex legislation based upon our own experience. And though this legislation is, from our own point of view, very wise and pro-

mising of the most satisfactory results, it is yet a question whether the measures on which we place so much reliance really supply a complete solution of the difficulties, or whether we must search for a different principle of action.

As the first political necessities have now passed, it is perhaps time to ask ourselves how far the institutions thus created really respond to the social and economic needs of the Philippine people We have thus far failed carefully and objectively to consider the possibilities of development contained in native conditions and qualities of character, but have approached the difficult problems of colonial administration with a finished program based upon a vague belief in Destiny and in the universal applicability of our institutions. The basis of our action has not been the character and the needs of the Filipino race, of whose social and economic life we as a people know next to nothing, but our own institutions, which we are familiar with, which we admire, and concerning the usefulness of which we have no doubt. On account of political conditions, the Philippine Commission has been forced to have its eye upon public opinion in America, and its suggestions for legislation to Congress have of necessity been framed in such a way as to avoid opposition at home. We have thus not shown any originality in the solution of colonial questions, nor have we to any marked extent profited by the experience of other nations. Working upon the idea that we had a very special problem to solve, and upheld by the belief that we were to act as the liberators of the Filipino race, we have used very little critical judgment, and have been guided rather by general ideas than by a specific consideration of local needs. Our course of action can be fully explained as the natural result of historical forces, and it is not in the spirit of fault-finding that we here desire to take up critically the details of our policy. Any representative of American nationality placed in the position of the Philippine Commissioners would probably have been forced to look at the situation from a similar point of view and favor a similar course of action. But as the first political difficulties have now been settled, the time has come for a somewhat more critical examination of our insular policy, in order to ascertain

whether we can really rest assured upon the results to be expected from the measures thus far introduced. Is the bestowal of our institutions in the manner accomplished a real blessing to the Filipino race? Does it really correspond to the social and economic needs of the islanders? To answer these questions we must for once dismiss from our minds American conditions and fix our attention carefully and single-heartedly upon the situation we have to meet in our dependency. We have attempted to adapt to a poor and backward community the institutions of a rich, highly developed, and individualistic nation. We are beginning to feel that we cannot assimilate the Filipinos completely; but we have not as yet reached the conclusion that it may be dangerous to follow a policy of pseudo-assimilation. All other nations that have to deal with colonial dependencies,—even the French, formerly the protagonists of assimilation,—have abandoned this policy in favor of a system taking more account of local conditions. If we really desire to give autonomy to the Philippine Islands, should it not be a larger autonomy, based upon the inner needs of social life among the Philippine people, rather than a formal autonomy which from that point of view must seem false and unnatural?

After 1906 the Philippines are to have a representative assembly composed of one hundred members apportioned among the various provinces according to the census and elected upon the same suffrage qualifications that prevail in municipal elections (the payment of 15 Philippine *pesos* per year in taxes, or the ability to read or write English or Spanish, or former municipal office-holding). Wherever thus far numerical representation has been tried in tropical colonies it has failed. It stirs up fruitless political discussion, bitter factional strife, and general dissatisfaction, without assisting the government in real constructive work. Where the representative system is successfully used in tropical colonies by other nations, it is based on the representation of interests, not of numbers; the council or advisory body in such dependencies is composed of representatives of the industrial, commercial, agricultural, and educational interests of the community, of men who are selected because of their expert knowledge of specific economic and cul-

tural activities, but not of professional politicians. An assembly based upon direct popular election, will, according to all precedent, consider itself the true representative of sovereign power. The most intelligent Filipinos at the present time desire some form of the cabinet system, by which the ministers composing the government shall be made dependent upon the majority in the representative assembly; and having granted a political assembly at all, we have given some show of a fair basis for such a claim. While it will look upon itself as the representative of sovereignty, the assembly will be essentially an irresponsible body, because the ultimate power is left with the Commission, which is to constitute the Senate and also the administration. Should the assembly refuse its concurrence to any appropriation bill, the respective item or items continue in force as fixed by the budget of the preceding year. The assembly will therefore have rather the show than the substance of power, and it may readily be foreseen, that its action will often take the form of unpractical demands for legislation, and that political agitation will be its main concern. This forecast does not imply that the Filipinos are ignorant. On the contrary, it assumes that their assemblies will act as other assemblies under like conditions have acted.* While we have no satisfactory basis to judge of the actual and potential political capacity of the Filipino people, it would yet seem to be well established that we cannot regard them as a democracy of independent and resolute individuals; the preponderant mestizo aristocracy will assiduously plan and struggle to control the assembly, and through it to realize its interests; and their only successful competitors in the organization of the electorate will be the class of white politicians with which the recent party history of Hawaii has made us familiar. The civil governor of the Philippine Islands in his report, speaking of the ability of the natives to serve on juries, uses the following language: "The great majority of the electorate are not now fitted to take part in the administration of justice." This judgment would seem

*Nor can we in this case appeal to the precedent of our territorial assemblies, for all surrounding conditions are absolutely dissimilar, especially as the assembly represents a different race from the government.

to deny their ability to participate as electors or representatives in the work of legislation, which certainly involves ideas and relations far more complex than those likely to come up in the criminal trial of the neighborhood. But this is not implied, and the extract perhaps shows that we generally underestimate the amount of character needed to make the representative system successful. We all must needs admit that jury service demands character, but we are too apt to look upon the matter of election as a mere intellectual function, and to believe that an electorate will not be too ignorant to vote, though it lack the qualities of character necessary for jury service. But no matter how great our trust in the educative efficiency of representative government may be, we cannot regard the Philippine elective assembly as a final solution, as an institution that of itself will bring satisfaction, happiness, and efficient administration to the Philippine Islands. It is an institution that will itself raise a multitude of problems.

The achievement of our government in the Philippine Islands which we are most ready to regard as a justification of our sovereignty there, is the system of education. It is literary education that we are introducing,—English reading and writing, the history and geography of the United States and of the Philippine Islands, arithmetic, and similar elementary branches. In our national life we justly consider the public school as the foundation upon which everything else must be built, and the literary system here in vogue does not exercise any harmful influence because the inherent trend of our nation is strongly set toward practical affairs. But we have made a fetish of literary instruction and have introduced it into conditions which differ from those of our national life as night from day. When we consider the curriculum, it may be granted that the teaching of English is practicable and desirable. There is weight in the argument of the Commission, that as the Philippine people possess no common language, and as the dialects have no literature and show no promise of development, the English language, by far the most useful medium in the Orient, ought to be studied as offering the greatest advantages to the natives. But the manner in which this plan is being carried

out may be justly criticized. By taking a little more time, the native teachers could have been taught the English language in the normal schools and could then gradually introduce it among the natives. The large sums of money now expended might have been employed to far better advantage in improving the equipment of the schools and in establishing an efficient system of industrial education. On the latter side the curriculum of the school ought to be stronger. The general results of a literary education such as now contemplated are by no means satisfactory in a tropical dependency. It is reported that the natives are exceedingly anxious to learn the English language. Indeed it is the general experience in Oriental and tropical colonies that the natives are anxious for literary training, but their primary desire in most cases is to free themselves from the necessity of manual work and to get a clerkship under the government or in some commercial house. The number of such positions is of course very limited, and after they have been filled, great dissatisfaction is sure to arise among the natives who are unable to secure the coveted posts and who are not willing to resume manual labor of any kind. It would appear that the intellectual education, of which we expect so much in the Philippine Islands, is also not a solution of the difficulties, but that it too will create further problems to be solved; and that, while we must continue to offer this kind of an education, it is desirable to inquire whether other kinds should not be encouraged more, and whether a different and less expensive system of organization should not be immediately developed.

The manner in which the educational system has been organized deserves some attention at this point. We have taken one thousand American teachers from various parts of the Union and have sent them to the interior of the Philippine Islands to introduce American education. This is of course at first sight an attractive idea—to have a large number of intelligent, well-mannered men and women come among the natives and give them a living example of American ideas, would seem a very fruitful undertaking. But the system appears to less advantage when we consider the actual conditions. These young teachers, who drop like aerolites into a country

of which they have no knowledge and with which they have had absolutely no former relations, are called upon to instruct the native youth in English, making that language, never before heard in the villages, the language of instruction. Indeed we cannot be surprised, when other nations are making merry at this somewhat grotesque undertaking. The worst feature of the system, however, is the fact that it threatens to degrade the native teachers, upon whom the entire hope of the Philippine educational system must after all be built. While the American teacher is paid a liberal salary from the funds of the Philippine central government, the native teachers are paid out of the provincial and municipal treasuries. Their salaries, fixed upon a very low standard, are not paid promptly, and the teachers often have to go from one year's end to the other without full payment of a month's salary. The central government cannot without constant interference control the finances of the local units so as to assure prompt payment of the teachers, who are consequently very often reduced to practical beggary, while the American teacher, a perfect stranger in the locality, is regularly drawing a salary several times as large as that of his native associate. The result upon the latter's social position, which has never been very elevated, can well be imagined. The heavy cost of the system, involving the payment of salaries far in advance of the current local rate to a large number of ordinary American teachers, is also a matter of great importance in a country so poor as the Philippine Islands. Where the very most rudimentary school equipment is lacking in all but a few localities, where even the adequate payment of a sufficient force of native teachers would be as heavy a burden as the dependency can bear, it seems a policy of doubtful wisdom to spend several million dollars on teachers who in the special work required are after all raw recruits, and who usually leave when they have acquired some knowledge of the country. If the United States out of its wealth paid a part of this expenditure the experiment would at least not involve so great a risk of the misapplication of the very limited resources now available in the Philippines for educational purposes.

Similar considerations suggest themselves when we approach

the question of general public administration. It is our purpose to give to the Philippine Islands good roads, to develop their forests and mines, to establish civilized sanitary conditions in the cities, to provide them with a healthy water-supply, and to construct harbor works which will facilitate foreign commerce. All these purposes are excellent and necessary, but we have in the very first four years of our government established a complex system of administrative bureaus and divisions, which would be sufficient to carry on the work of a highly prosperous and fully developed government. Here too, we have been anxious to do a great deal in a short time, without fully considering the question as to how much an undeveloped country is able to bear. The actual results in work accomplished are difficult to ascertain from the bulky and ill-arranged reports of the commission and its various departments. It is apparent that Manila is on the whole well cared for, that a good road has been constructed to Benguet, a province suitable for summer residence, and that some valuable harbor improvements have been begun. It may well be questioned whether the intricate mechanism of the thirty odd divisions and bureaus in the various departments of government would have been at this time necessary. It is a mistake that has been made by other colonial governments, notably the French and German, to believe that wealth can be created in new regions by administrative action, and that by constructing the governmental framework of economic development, the latter itself is assured. We cannot expect through government action to develop the wealth necessary to support these agencies, and the condition of the islands at the present time certainly calls rather for complete freedom and encouragement of private initiative than for an expensive administrative system. It is difficult to avoid the impression that there has been too much administrative detail, such as is suitable for a fully developed administration in a settled country; too much time is spent in reporting, too many clerkships are used for mere literary work, while the actual accomplishment of this vast mechanism is not entirely satisfactory. While the French and Germans have made a similar mistake, they, at least, are paying the bill them-

selves, while we charge it up to the Philippine Islands, which are hardly in a position to pay it.* The Philippine Islands with a population of 8,000,000, at the present time have nearly as large a number of white officials as Java with its 30,000,000 and British India with its 230,000,000 inhabitants. Yet, what is required for the effective administration of a colonial dependency is not a multitude of officials but a small number of highly trained men of character, to whom extensive powers may safely be entrusted. The bane of colonial governments is clerkships and the red tape and reports of administrative bureaus. The average employee is not wanted as a colonial official. When we look over the sketches of the twenty-five defaulting treasurers in the Philippine Islands, we must conclude that such men lack the intelligence, training and character necessary for a position of trust under such difficult conditions as the colonial service implies. We need fewer officials with larger powers. We need fewer reports and less red tape, but more actual work accomplished. In this matter public opinion in the mother country is satisfied by the creation of agencies which apparently lead to the development of colonial economic life. But it never questions the cost, nor does it face the problem as to how far these agencies can actually succeed in their purpose. The American nation, accustomed to lavish public expenditure, glorying in a billion dollar congress, is in no position to appreciate the condition of a country in which agriculture is the only source of wealth, in which all industry is depressed, and where all larger means of wealth-creation remain to be organized. We wish to govern the Philippine Islands upon the standard of efficiency of a Western nation. We attempt to do it by immediately creating the intricate and expensive mechanism we are accustomed to at home. But the financial burden is too heavy for our dependency. When we compare the budget of the Philippine Islands with that of other

* Thus by the recent act creating the government of the Moro provinces, it is provided that $70,500 gold shall be spent annually for the support of the principal officials. This amount, $141,000 in Filipino currency, is larger than that paid by a prosperous state like Wisconsin for all its state officials and clerks.

dependencies which are in a fairly similar natural condition, we find that the per-capita expenditure in the Philippines is twice that in British India and in the Dutch East Indies, although the latter two dependencies have a far more highly developed economic life. In 1903 the expenditure of the central and provincial governments of the Philippine Islands in round figures was $15,000,000, which, when we consider the local monetary conditions, is equal to about double that amount in our country. Efficient government being so expensive, shall we then lower our standard, or shall we assist the Filipino people to bear the burden while they are still weak? The policy of subventions, it must be admitted, does not commend itself as a regular arrangement, on account of its effect on the economic independence of a colonial possession. What we need to give is not subsidies, but a free opportunity to the economic life in the Philippine Islands to unfold itself. Only when a sound economic substructure has been created, may we hope that the institutions we have thus far introduced will become of real benefit to the Philippine people.

Our review of Philippine legislation thus far has shown that the measures upon which we have chiefly relied to give success to our colonial enterprise do not of themselves offer a solution of the serious problems; that in fact they open up new questions which clamor for solution. We should not disregard these existing difficulties and, satisfied with a vague reliance on the excellence of our institutions, blindly trust to the future to solve its own problems. We may well question ourselves what results we can reasonably expect these measures to produce. By their natural effect, the population will be encouraged to believe that their salvation lies in learning the English language, in voting, and electing representatives. But they will learn our language in order to obtain agreeable employment, and a purely intellectual education will leave them less inclined than ever to engage in manual work. No attention is being given to the more intimate history and traditions of these populations. Their folk-lore will be abandoned and destroyed and a vague superficial education in subjects which have no real connection with their racial life, will be

substituted. Nor can it be said that the political institutions thus far introduced can be relied upon to furnish a suitable basis for national life. The futility of elections will soon be recognized and the door will be opened to irresponsible politicians of doubtful character to exert their influence in stirring up dissatisfaction. Demands will be made upon the government which it will not be able to fulfill, and the natives, taking political agitation for constructive work, will have very little opportunity to obtain real training in national political action. Meanwhile the expenses of the government are rapidly increasing and a debt charge is being added to the regular expenditure. The limit of financial possibilities will soon be reached and our government will then by necessity have to readjust the entire scheme of public administration. But though we have been forced by political exigency to saddle ourselves with a number of burdens in our colonial administration, it is by no means too late to ask ourselves whether the tendency of our policy may not be changed. We have thus far had in mind an active, progressive, well-to-do, individualistic people, and it is time that we should fix our attention strictly upon the conditions in the country with which we have to deal and the racial characteristics of its inhabitants. The Philippine Islands have never been highly developed. Though they are a country of rich natural resources, agriculture has thus far been carried on with primitive processes on a small scale. There have been no manufactures except those connected with the first preparation of agricultural products for the market. The prime accessories of prosperous economic life, such as transportation facilities, are almost entirely lacking. Our possession is a country very favorably situated for commerce. Lying on the direct route between Australia, New Guinea, and Java on the one hand, and Japan and China on the other; between Singapore and India, and the United States; it is apparent that the islands under a liberal commercial policy, would develop a flourishing international commerce. The population with which we have to do is poor, shiftless, easy-going, and poetic of temperament. The masses are ignorant and deceitful, although appreciative of kind and just treatment. The people

we have to deal with are not organized as an individualistic democracy. The real social power is in the hands of the mestizos, who were anxious for the introduction of elective institutions, in order to secure for themselves whatever political prestige these institutions may bestow. The conditions of life everywhere except in Manila are of the most primitive nature. The natives have adopted the outward civilization of Spain, they are polite and hospitable, but they utterly lack energy, and they have thus far not given proof of originality or power of organization. They exhibit the same psychological traits that are found among the Malays of Java and on the mainland, who have been under the tutelage of the Dutch and of the English, or have lived in comparative independence.

Among the facts most clearly apparent from a study of colonial development, there is none more insistent than the difficulty of modifying social institutions and psychological characteristics by purely political action. The attempt has frequently been made to transfer the accessories of civilization to other races, but thus far the experiments of this kind have invariably resulted in disappointment. The destruction of native *morale* and social organization brought about by such an effort is usually not followed by an intelligent and complete adoption of the higher standard. It is therefore believed that it is not a wise policy to attempt directly to modify the psychology of an alien race. If any effort to raise the social standard of such races is to be successful, it must probably take the direction of modifying the economic structure upon which the social life rests. With sounder economic processes, with greater facility of inter-communication, with freer opportunities for economic enterprise, with a fuller utilization of natural resources, a general social development approaching more nearly the standard of our own individualistic civilization may be looked for. But this cannot be the work of a decade, nor can it be achieved through the adoption of a fixed program. The main consideration is that economic forces should be freed in their action from the many obstacles which they are apt to encounter in colonial enterprise. The true activity of the government is not creative of social action but liberative of

social forces, removing obstacles which impede the progress of individual development and enterprise.

Let us now cast a glance over the general economic policy which the American government has applied in the Philippine Islands. On account of the complicated administrative machinery which has been introduced, it has been necessary to establish and maintain a most comprehensive system of taxation. A land tax furnishes the main resources for municipal and provincial government. The internal revenue taxes and the customs tariff are used for the purposes of the central government, which, however, turns over one-fourth of the proceeds of the former to the local units. The internal revenue tax strikes every commercial transaction in which writing is necessary and besides imposes a general charge upon the volume of any individual business and upon the practice of any profession. Outside of Italy it would be hard to find a system of taxation that so efficiently scours the whole field of business. The merchants and professional men of a country like the United States would look upon it as a most unbearable burden. To this is added a tariff which in its present form is high enough to be protective if there were anything to need protection, as well as an export tax upon the principal products of the islands. The commercial policy adopted is one of restriction rather than freedom. A high tariff, rigid customs house regulations, exclusive shipping laws, and prohibitory duties in the mother country constitute the elements of a policy through which we hope to regenerate Philippine commerce. The government favors a policy of harbor and internal improvements; these works are to be constructed either out of public funds or with an interest guarantee by the Philippine government. A restrictive land policy has been established by Congress under which the maximum amount of public lands to be sold to any one corporation has been fixed at 2000 hectares. Chinese labor has been excluded from the dependency, and while a literary education has been provided for the natives, practically no steps have been taken to train them to greater industrial efficiency. The restrictive element in this policy has been largely imposed upon the islands by Congres-

sional action. Congress has passed the coasting law, has restricted the land sales, and has refused the Philippine products free entry into the United States. On all these points the Commission has insistently argued for a different policy. It has, however, favored the system of taxation, the policy of railway guarantees, the law for Chinese exclusion, and literary education.

We may now consider somewhat more in detail the economic policy along these various lines. The development of industrial life in a colony is closely dependent upon the commercial policy. Tropical colonies produce food materials and the raw products for manufactures. It is most important to them that the market of the entire world should be open to their products. They have no interest in a protective policy because they do not develop manufacturing industries. A low revenue tariff, interfering as little as possible with the currents of trade is therefore most conducive to economic welfare in tropical possessions. But although we are bound by treaty not to claim exclusive commercial benefits for the United States before 1909, it is already unhappily apparent that our policy towards the Philippine Islands is governed primarily by the interests of our own manufactures. It is to be seriously apprehended that when the time for unhampered action on our part comes, the American manufacturing industries will demand exclusive privileges in the Philippine Islands. At that time the United States will be in a position to prove to the world its sincerity, both in its professions of benevolence to the Philippine people and its preference for the open door in the Orient, and it is to be hoped that then public opinion will assert itself and demand that the commerce of our dependency shall not be shackled and confined to restricted channels in favor of the manufacturing interests of our country, no matter how important they may be.

The tariff for the Philippine Islands which was adopted by the Commission in 1901 has rates which are in general too high for a tropical dependency; thus for instance, it taxes imports of textiles from 25 to 40 per cent., and iron manufactures 15 per cent. as a minimum. The tax on machinery is to be re-

duced, but to tax any industry that has invested a large sum of money in machinery with which to develop Philippine resources, is certainly not the way to encourage industrial progress. At the present time the enforcement of the customs regulations of the Philippine Islands is so harassing as to have become exceedingly inconvenient to commerce of all sorts. The prosperity of British commerce and colonial development in the East is due primarily to the liberality of commercial arrangements in such colonies as Hongkong, the Straits Settlements, and India; and if the Philippine Islands are to draw the fullest advantage from their marvelous geographical position, it will be necessary to make the custom house procedure as free from unnecessary delay and vexation as possible. Commerce is very sensitive in such matters and it is easily driven away by improper restrictions. It is to be hoped that in time one or two absolutely free ports may be established in the Philippine Islands. Thus Manila itself should have a free port where the products of the various countries that lie in a circle about the Philippine Islands might be exchanged. In that case the city might hope to rival the commercial prosperity of Hongkong and Singapore. It is not necessary that the entire city should be embraced in the free trade zone—some such arrangement as the Hamburg free port reservation might be made. By an unprecedented extension of the law of coasting trade, we shall after 1906 prohibit any foreign vessel from carrying merchandise between the Philippine Islands and the United States. By erecting a monopoly in favor of American vessels we shall thus impose a heavy burden upon the commerce of our dependency.

Although in consequence of revolution and war the industries of the islands are in a most precarious position, Congress has steadfastly refused to give the imports from the islands a substantial reduction from the regular tariff rates. A reduction of 25% is recognized by all disinterested parties as being far too small; but the protected interests, being influential with the government, are reluctant to grant a larger preference to colonial trade, not on account of any present danger to them, but simply because they fear to establish an inconvenient precedent for future action.

The Commission has from the first in its various reports emphasized the necessity of greatly improved facilities of communication in the islands; and indeed, utterly inadequate as were the roads of the interior before the war, they are at the present time through long neglect and the destruction of bridges in a worse condition than ever. The policy of the Commission involves the construction of highways by the local governments, the encouragement of railway building, and the development of an efficient system of coasting trade. Engineering work in the tropics is especially difficult on account of the devastation caused by heavy rains. The methods of American road building will have to be modified considerably to produce lasting results in the Philippine Islands at an expense not incommensurate with the benefits attained. Considering the poverty of the municipalities, road-building will necessarily be slow. Proposed legislation gives the municipalities the power to borrow money at five per cent. for the purpose of local improvements; the total debt not to exceed five per cent. of the assessed value of the real property in the *municipio*. The exercise of this right will have to be closely supervised by the Commission to avoid the result of saddling the local governments with a heavy debt for money expended in poorly constructed roads. The central government itself has spent nearly a million dollars in building a road from Manila to the province of Benguet, and a larger amount for harbor improvements. By Congressional legislation the Philippine government is to be given the power to guarantee four per cent. interest upon not exceeding $30,000,000 of capital of the railway companies which will undertake the construction of railroads in the Philippine Islands. In imposing the probable charge of $1,200,000 per year upon the Philippine treasury, Congress contemplates certain precautions to protect the latter. Interest is to be guaranteed only upon capital actually invested in railway construction, and the gross earnings of the companies are to be applied as follows: (1) to operating expenses; (2) to necessary repairs; (3) to betterments approved in writing by the governor-general; (4) to interest on the bonds guaranteed by the government; the interest guarantee is therefore not

absolute but is to be effective only in case the company does not earn a sufficient income to pay the interest itself. All payments made by the government upon the account of interest are to constitute a lien upon the property of the railway companies. With these safeguards the Philippine treasury seems to be sufficiently protected. It is, however, well to remember that the building of a railway itself does not develop the necessary wealth, and that the Commission will have to be very careful in granting its charters only in cases where a beginning of economic development at least justifies the expensive construction of a railway.

As in all tropical dependencies, except in India and Java, the question of the labor supply presents the greatest difficulties in the Philippine Islands. According to the almost unanimous testimony of practical observers, the Filipino laborer cannot be relied on for steady continued work. The harder work which can easily be done by American or Chinese labor, is shunned entirely by the Filipinos, who are accustomed to work leisurely on their small farms. The Commission has officially expressed its confidence in the ability of the Filipinos to furnish a sufficient labor force. And, indeed, at the present time, when all industries are undergoing a decline, the government and a few construction companies certainly should not have any difficulty in getting the labor they need at the very fair rate of wages which they are able to pay. But a private employer, who is competing with producers in Japan, China, and India, will have to adhere strictly to the current rate of wages, and will not be able to attract laborers by enhanced renumeration. As the sugar and tobacco industries gradually recover and as large public works are executed, the question of labor supply will become more and more acute. The American government has extended to the Philippine Islands the Chinese exclusion law. At the time when this exclusive legislation was adopted in the United States, there was some show of reason for the measure. The standard of living of the American laborer had to be protected and large areas in California open for settlement had to be reserved for people of our own race. But at the present time, when the policy of Chinese

exclusion has lost much of its justification in the United States, it appears entirely artificial when applied to the Philippine Islands. The Chinese are the most industrious and energetic race of the Orient. Through their industrial and commercial ability they have in the past made the success of such cities as Hongkong, Canton, Singapore, Batavia, and Manila. They are the next-door neighbors of the Philippine Islands and nothing is more natural than that there should be intimate social and commercial relations between these countries and peoples. In extending our legislation to the Philippine Islands we apply by analogy the same arguments that have been used to defend it in our own country. We desire to protect the Filipino laborer against competition, and the Filipino peasant against expropriation by the successful Chinese. As to the first point, it is not believed that the Filipinos are anxious to do the work which Chinese laborers would perform, nor is it clear where the industries that are to support the expensive administration of the Philippine Islands are to secure their labor supply. As to the second point, it would be perfectly feasible to protect the Filipinos by restricting the land sales to the Chinese, and by limiting the numbers of Chinese immigrants and the time of their sojourn. It is by no means apparent that the Filipinos do not gain by association with the Chinese. The Chinese-Malay mestizos are generally considered superior to the original Malay stock. Chinese character contains just those qualities in which the Malay is weak, and it can in no sense be looked upon as a racial misfortune if a certain amount of intermarriage between the Chinese and Filipinos should take place.

Considering the native labor supply, it is probable that the system of literary education will render the native population less inclined than ever to perform manual work. The Philippine Commission declares that the natives do not desire industrial education. This is uniformly true of tropical and oriental peoples, who come under Western tutelage. Seeing the race by which they are governed abstaining from manual toil, they consider this exemption as the only honorable manner of living, and aspire to a position which will enable them to do likewise. But if the practical American people is to attain

an original achievement in colonial administration, we ought to think that it would lie along the line of developing the industrial efficiency and the practical talents of their wards. If the millions of dollars that have been spent in the importation of American teachers had been put into a well considered system of industrial education, a fair beginning might by this time have been made. It would certainly have been possible to arouse the interest of the natives in industrial training. If native teachers who excelled in industrial ability were given preferred treatment, if pupils were distinguished according to their ability in industrial work, a new standard would very soon be established, especially if the natives would see Americans themselves work with something of their accustomed energy. No more hopeless outlook can be conceived of than that of a tropical population which sets up the standard of a barren intellectual culture; and the sooner agricultural and industrial training is given a prominent place, not only in the secondary but in the primary schools throughout the islands, the better will it be for the ultimate happiness and prosperity of the Filipino people.

The land system established by the Congressional legislation is based upon the laudable idea that monopolization must by all means be prevented. Therefore Congress has restricted the amount of land to be sold to any corporation to 2000 hectares, and has provided that no individual or corporation shall hold more than one mining claim on any lode or vein. The object avowed by Congress is certainly necessary and praiseworthy, but again American conditions have been in mind rather than those of our dependency. It is well-known to any one familiar with tropical agriculture that the expensive industrial establishment of a modern plantation calls for a larger tract of land to supply it than that provided for in the law. There is no scarcity of land in the Philippine Islands; as a matter of fact 61,000,000 acres are at the disposal of the government. Monopolization of this land might be prevented effectively by other means, some of them also included in the above legislation, such as charging a fair price, taxing the land, granting only long leases, and making definite requirements

with respect to its cultivation. Under the present system capital will be backward to engage in tropical agriculture in the Philippines. It would not be necessary entirely to remove the restriction, although if the other measures are taken, it is difficult to see how any individual or corporation would desire to own a larger quantity of land than could be industrially utilized. The Commission has repeatedly urged Congress to raise the maximum limit of a grant to 10,000 hectares, a figure which would be large enough for the needs of tropical agriculture and which would at the same time prevent monopolization.

The Philippine Islands have everything to gain from the free employment of capital in their commerce, agriculture, and industry, and an over-anxiety to prevent the exploitation of the islands and the natives may well lead to measures that will prevent development altogether. The natives should indeed be protected and the public domain should be preserved for future generations; but this may be done by measures which do not conflict with the natural liberties which commerce and industry require in order to gain strength.

To the end that the Philippine Islands may be prepared for autonomy, we ought to be willing to allow the Commission to judge any proposed policy entirely upon the basis of local conditions. It should be given the greatest measure of independence in formulating its legislative policy. We should not expect it to produce a vast amount of action, but we should insist upon quality in the personnel of the civil service and in the results obtained. Attention should not be concentrated on public opinion in the United States, but should be given primarily to an analysis of the needs of Filipino society. In the dominant country the supervision of colonial affairs should be carried on in a liberal spirit by the Insular Bureau, interfered with as little as possible by Congressional action. The Bureau might be assisted in its difficult work by a colonial council, composed of men who have a practical experience in administration and of other experts on colonial matters. Such a council of experts could safely be trusted to exercise a certain moderating influence upon the administration and to judge wisely of measures to be introduced and of general lines of policy.

Before all, the American people must learn to be satisfied with that natural progress which is necessarily slow. Should we continue to sail rapidly down the stream of pseudo-assimilation, a complete catastrophe could hardly be avoided. The social and economic conditions of the islands cannot be regenerated by state manifesto. Improvement can only come through the patient work of decades, and it is only on the basis of more highly developed economic conditions that a suitable social civilization can be erected. Sweetness and light in this case takes the form of business common sense and the avoidance of far-reaching schemes of artificial assimilation. We shall never succeed in making Americans of the Filipinos; but we may hope by a careful, considerate, natural policy, to assist in raising their life to a higher plane, though it must remain their life, and will never be ours.

DISCUSSION.

HENRY C. MORRIS: From the discussion of this morning, it appears that there is urgent and special need for the education of the people in matters relating to colonization and colonial policy. While the effects of this meeting will, without doubt, be widespread, they can at best be only temporary. The acquisition of colonies or dependencies has been met, by a very considerable number of the people of the United States, with disfavor. There has been, on the part of certain politicians and one of the great political parties, a disposition to decry any system of colonization. However ardent the aspirations of others in the direction of colonial empire may be, it must be confessed that with the legislative organization and administrative features of our country, numerous difficulties are presented to the assimilation or incorporation of colonies, under whatever name they may be known. There is no doubt that the United States cannot well adopt, as an entirety, any system which may have been elaborated by another power: differing conditions require varied methods of treatment. With the masses of people and the larger proportion of the members of our working political bodies, unfamiliar with the history of colonial possessions; or even at the best with only the short experience

afforded them within the last six or seven years, it is not surprising that mistakes both in policy and in method should have been made and that embarassing situations in some instances may have ensued. The need of the times in the elaboration and improvement of colonial government, administration and service seems emphatically to be an opportunity to become familiar with the experience of other nations under similar conditions. It is comparatively easy to criticise, but far more difficult to formulate plans and procedure. To the representatives of such an organization as the American Political Science Association, the task of aiding and assisting in this undertaking would seem to be peculiarly fitting. While not perhaps advocating at this moment the establishment of any distinct organization, it would appear that one of the most helpful steps that might be taken, would be the inauguration of some association in the nature of a colonial institute, the purpose of which should pre-eminently be the study of problems connected with colonization and colonial policy; which might also, by reason of its peculiar advantages, be in a position to recommend and secure the adoption of many beneficial and advantageous suggestions. The Government would, undoubtedly, in time, recognize the value of such an organization and those officials under whose direct supervision the administration of the colonies falls, would soon appreciate the assistance and help offered them. Would it not be feasible for this present association to establish a colonial section charged with duties and functions of such a nature? Gradually it might expand and develop the field of its operations until it became not only a permanent adjunct in the colonial system but also a potent force for good, in the development of an interest at home in colonial affairs as well as in the preservation of the colonies themselves from the evils of a harmful policy and the effects of maladministration.

THEODORE MARBURG: Professor Reinsch's paper is so full and so suggestive that it is difficult to choose between the subjects which invite discussion.

There are certain large aspects of the question which might

profitably be dwelt upon. One of these is the problem of the race or people which is to carry forward the work of progress in outlying regions. It is important, for example, to distinguish between the welfare of the present inhabitants of a country and the welfare of the country itself. When we say that we mean to administer our dependencies for their own benefit, and not for ours, it should mean that we are concerned less with the well-being of the people who happen to be there at the moment than with the future welfare of the dependency. The units of the existing population, like ourselves, are a passing phenomenon. They should, of course, suffer no injustice, but should they on the other hand be favored as against another race who might lay a better foundation for the future welfare of the country? What we are concerned in, and what the world is concerned in, is the upbuilding of civilization everywhere in all parts of the earth. Porto Rico, for example, contains a mixed population in which thus far the Spaniard, through education, the advantage of capital and government favor, has been the dominant factor. History would indicate that the Spaniard cannot stand up against the Teutonic peoples; and if the island is opened up freely to the latter the chances are that the present inhabitants will be relegated to an inferior position. Even though this result were positive, would we not be justified in inflicting this hardship upon the present inhabitants in order to have the island take rank with the enlightened and progressive places of the earth? The Spaniard in California has been brushed aside in this manner; but as a result that region has developed untold riches of agriculture, mining and industry. Through her great universities and schools and through her local government California is to-day making important contributions to human welfare. Why is not fertile Porto Rico capable of like development?

When we turn to the Philippines we find a different condition. The European has formed the habit of looking down upon the dark-skinned peoples. The backwardness of these peoples, until recently, has justified such an attitude, but now the phenomenal progress of Japan must give us pause. There is no

basis for a belief that the Filipino can be started on the road to progress, but neither is there sufficient ground for disbelief. It is our duty to at least give him a chance by placing within his reach the means of enlightenment.

As Prof. Reinsch has pointed out, the islands need a common language and English will be the most useful language for them. Civilization resides in language more than in any one instrument because the language carries with it the philosophy —scientific, ethical and political. If we can but light the spark of purpose in the Filipino, as it has been lighted in the Japanese, the rest of the task will be easy. Without that, mere book knowledge or even industrial knowledge will prove of little avail. We may find after all that the most that we can do for these people is to establish justice and provide the means of education. But if more is to be done, the problem can best be approached by trying to convey to them through language the spirit of Western civilization. Material prosperity can mean little to them unless it brings this with it.

W. W. WILLOUGHBY: There would appear to be a tendency upon the part of students of the problems of colonial government as they are presented to the United States to commit two errors. The first of these is not sufficiently to bear in mind that the United States in its dealings with its insular possessions has deliberately undertaken the performance of a dual task, the two phases of which are to an extent mutually incompatible. We are now endeavoring to supply our dependent territories with as efficient an administration of their public affairs as is possible, and at the same time are seeking to educate their inhabitants in the art of honest, efficient, self-government by granting to them as much local self-government as circumstances will possibly warrant. Thus we have knowingly consented to sacrifice to a certain degree success in administrative efficiency in order to obtain that which, ultimately at least, we believe will be more valuable,—development in such populations of powers of self-government. The second error, which it would seem that the critics of colonial problems generally fall into is that of attaching a relatively too

great importance to the central, or, as we term them when applied to Porto Rico and the Philippines, the "insular" governments, as compared with the local, that is, the provincial and municipal governments in those islands. Only the first step, and that by no means either the most difficult or the most important, has been taken in the government of a dependent territory when there has been determined the relation in which such territories shall stand to the parent State, and the form of central government that shall be established for it. The more delicate, and therefore the more difficult task, is to provide it with local institutions. It is especially within this field that the necessity arises of taking into account local needs, local prejudices, local habits, and, in general, the racial characteristics and political capacities of the people who are to be governed. It is especially in this field that the art of honest efficient government is to be taught and this may best be done by granting to the inhabitants, as far as possible, the administration of their own local affairs, retaining in the hands of the insular governments but a supervisory power which is to be exercised only in cases of the misuse of the local powers so granted.

STATE BOARDS OF HEALTH.

CHARLES V. CHAPIN.

In our colonial history, and also in the early part of our national existence, public sanitation was almost exclusively a function of local government. As occasion arose from the presence of epidemics, the towns through their regular officers, or more often through special committees, would take such preventive measures as in each case seemed to them best. It was not until the close of the eighteenth century that permanent boards of health were established, and for three quarters of a century such boards were confined almost exclusively to the larger cities.

If we except Louisiana, where a state board of health was established in 1855, almost exclusively for the purpose of maintaining quarantine at New Orleans, the first state to

establish a state board of health was Massachusetts in 1869. This marks the beginning of the states' activity in sanitary affairs. The idea of a central control in such matters has grown so rapidly that during the 35 years that have since elapsed, central boards of health have been established in all the states and territories except Idaho, and also in Hawaii, Porto Rico and the Philippine Islands. It was undoubtedly at first intended, as shown by the act establishing the Massachusetts board, that these central boards should be purely advisory, and they were required merely to investigate the causes of disease and report thereon. But it was inevitable from the problems confronting sanitary officials, and from the trend of public opinion in regard to the functions of the state, that the work of the state board of health should undergo a progressive and rather rapid enlargement. Perhaps the best way to consider the subject is to review as rapidly as possible the various sanitary duties which the legislatures have placed upon these state officials.

1. *Research work.* Oddly enough the *prime* object for which most state boards of health were established has been generally neglected by those organizations. The Massachusetts board was required to make " inquiries in respect * * * to the causes of disease, especially epidemics, and the sources of mortality and the effects of localities, employment, conditions and circumstances on the public health." Substantially the same phraseology is found in the acts establishing boards in many other states. It was evidently intended that the principal work of the central board should be of a scientific and educational nature, and should consist in the study of the causes of disease and the publication of results. But the progress of epidemiology and sanitary science is under little obligation to our state boards. It is true there are some exceptions, notably the work of the State Board of Health of Massachusetts upon water supplies and sewage, a work which has a world-wide reputation; but in the main the state boards have become more and more interested in purely administrative matters and have neglected the research work for which they were primarily established.

2. *Control of local sanitary organization.* Home rule has for some time been the shibboleth of many political reformers, but the state has meanwhile been exercising a progressive control over local sanitary affairs. This has shown itself in various ways, the most notable being in the appointment or removal of local officials. In at least nine states the central board controls the appointment of one or more of the members of the local boards or of the local health officers, and in three others it has the power of removal. Besides these, in Florida where there are few local boards, agents appointed by the state health officer perform the necessary executive duties. In Montana the state board is to organize local boards in every city and village, and in Arizona and South Carolina it is to direct and supervise the local boards. In at least a dozen states, when the local authority fails to appoint a board of health, or such board fails to act, the state board may assume full executive control, and in many states it is provided that all expenses incurred shall be a charge upon the local government. Sometimes, as in New York and Pennsylvania, state-appointed inspectors co-operate with the local officials. Besides the direct control over the local executive, the influence of the state officials makes itself felt in other ways. Thus many states make the establishment of boards of health obligatory upon counties, townships, cities or other local units, but of course such laws, if there was no authority to enforce them, would in many if not in most of the smaller communities, be disregarded. Hence it is that the very existence of a local sanitary organization depends in a vast number of instances upon the energy and administrative ability of state officials. A study of public sanitation in our smaller communities will convince any one that it is almost entirely dependent upon the activity of state officials in keeping the local authorities up to their duty, and instructing them in proper procedures. Under the lead of the state board, or of some of the more efficient local officers, there have been organized in many states conferences of sanitary officials. These have existed for many years and from them have developed the more formal "schools for health officers" which have recently been established in

New Jersey, New Hampshire, Indiana, New York and Vermont. In some of these, attendance by one delegate from each local board is made compulsory by statute, and his expenses becomes a charge upon his township or city. It is evident that by means of these conferences or schools, the state board can exert a powerful influence upon the local boards and secure much greater uniformity of practice than would otherwise exist. In New Jersey still another method for securing uniformity and making the influence of the state board felt, is to be put on trial. After January 1, 1905, no health officer or sanitary inspector can be appointed, who has not passed an examination prescribed by the state board of health.

Thirty-five years ago there were no state boards of health and only a few local boards. Now state and local boards are provided for in almost every state and territory and the latter are in many cases under the direct control of the former. So far as immediate sanitary results are concerned there can be no doubt that the movement has been decidedly beneficial. Rural and village sanitation is almost entirely a product of state administrative work, and genuine sanitary progress is hardly possible without central direction. In regard to the specific question of the advisability of the state control of local appointments, there is some difference of opinion. So far as the writer has been able to learn, such control, so far as at present exercised, has been for the good. The state seems to be more successful than are the local governments in selecting properly qualified health officers. One objection to state appointments is the danger of too great uniformity. But in the smaller communities uniformity should usually be promoted. In the larger cities with their varied problems, initiative and independence on the part of the health officer are often desirable, and indeed necessary, for progress. Therefore the exemption of the larger municipalities of Connecticut, from the state appointment of health officers, is perhaps a wise one. The objection that state appointments may be made for political reasons, seems to be of little moment, as local appointments are perhaps quite as likely to become corrupt. Judging from the success of state appointments in Connecticut and

Vermont it would appear that the plan is worthy of more extended trial.

3. *Control of communicable disease.* The earliest form of state sanitary control was that of quarantine. The advantage of uniformity in quarantine regulations is very great, and the evils due to the struggle of cities and towns among themselves in such matters are unbearable. Hence the states have very generally come to reserve to themselves quarantine powers. Until very recently all but seven of the 22 seaboard states either administered quarantine through state officers, or reserved the right to interfere in local quarantine. Since 1893 a further step in centralization has been taken, for seven states have transferred the control of maritime quarantine to the federal government. At present a large number of the inland states also have empowered their state health officials to prevent the introduction of contagious disease, and in some states the governor may proclaim quarantine. Quite a number of states have set aside epidemic funds of from $3000 to $50,000 to carry on the proposed preventive measures. The quarantining of one city or town against another in the same state has often been productive of great and unnecessary hardship, particularly in the South. Consequently many of the Southern states have of late taken the right of quarantine from the local governments, and conferred it upon state officials.

In the general management of communicable diseases, many of the states authorize their officials to interfere in local affairs, but usually only when the local authority fails to act, or there are local disputes. The state boards of health are very generally authorized to make regulations concerning contagious diseases—whether constitutionally or not is perhaps open to question—and by these rules often very directly control local management. Of late years also the states have begun to build and maintain hospitals, for several states have already constructed sanatoria for the cure of consumptives, and several more are considering the matter. A great many of the states have for some time maintained bacteriological laboratories to aid physicians in the diagnosis of various diseases, and some states have begun the manufacture and free distribution of vaccine virus and antitoxins.

4. *Food control.* This is usually considered within the domain of public health work, though it has closer relations with morals and economics than with health. So far as the prevention of general food adulteration is concerned little has been or can be accomplished by local effort. Much has however been done by state officials. The first efficient state action was taken in New York in 1881, and the state board of health was entrusted with the enforcement of the law. At present most of the states have pure food laws, and in some their execution is entrusted to the state board of health, but usually to food or dairy commissions, or to agricultural or experiment station officials. Although much has been accomplished by state inspection, it is generally admitted that federal control is necessary to secure the best results. In one line of food control, namely, the inspection of meats, the federal government has already taken an active part, and is doing more than is accomplished by the states.

The protection of milk supplies has had a different history. This inspection has been largely local, and was undertaken by many cities before there was any state inspection of food at all. In most cities this method is still pursued, though there are manifest difficulties in a city controlling producers and dealers living in many different municipalities, and perhaps in different states. It is on account of these difficulties that a few states have placed the whole control of the milk supply in the hands of the state dairy commissioners. In Iowa, at least, where this plan has been followed for some years it is said to have proved very successful.

5. *Protection of the purity of public waters.* If it is difficult for a community to protect its milk supply because it is drawn from such a wide territory, it is even more difficult to protect its water supply, which is drawn from an equally large territory, and is frequently menaced by very powerful interests. Hence the state has been called upon for aid. In quite a number of states, among which are Massachusetts, Minnesota, New Hampshire, New York, Ohio, Rhode Island and Vermont, the state board of health has been given very great power, and is authorized to prevent by the

most stringent measures, the pollution of potable waters. This power has been widely exercised to the great advantage of the users of these waters. An important part of river pollution is the sewage from municipalities, and any efficient control of the pollution must consist in control of sewage disposal, which necessitates more supervision of local administration by the state. Thus in some of the above-named states no sewerage works can be undertaken without the approval of the state board of health as to the method of disposal.

The gross pollution of rivers not used for domestic supply, often causes great nuisance, which can best be abated or prevented by the state. Such control has sometimes been exercised by the state board of health and sometimes by especially constituted state commissions.

6. *Control of professions and trades.* The practice has gradually grown up of requiring a license before pharmacists, physicians, undertakers, barbers, plumbers and others whose business is supposed to affect the public health, are permitted to follow their avocations. At first such licenses were issued by local governments, and only in the larger cities, but now the general practice is to establish state licensing boards. Special boards to control the above trades, and many others, have been established in most of our states, though in many instances the state board of health is made the licensing agent. The writer believes that this practice has already led to grave abuses. There seems to be excellent reason for licenses in some kinds of work as that of engineers, physicians and pharmacists. On the other hand, there does not seem to be sufficient reason for the state licensing of plumbers, barbers or undertakers. Unless great care and discrimination is exercised, the extension of licensing to all sorts of trades and business, will remove the whole question of state control from the domain of public health and safety, to the domain of labor problems, and will perhaps cause a reaction against licensing in any trades. Sanitary officials should certainly be on their guard against being drawn into any licensing scheme, unless such are plainly required for public health reasons.

7. *Control of vital statistics.* While the collection of vital

statistics has only an indirect relation to the preservation of public health, yet it is a fundamental of sanitary practice and progress. But the collection of vital statistics can only be accomplished under central control. It is true that the cities were pioneers in this field, and some of them have done excellent work, but it is just as necessary that the births, marriages and deaths of the whole state or nation should be uniformly recorded, as it is that the census should be taken. As yet scarcely a dozen states have provided for an adequate system of registration, but it is hoped that under the guidance of the federal census bureau the others will rapidly be induced to take up the work.

It is thus seen that during the last quarter of a century the states have gradually undertaken a vast amount of sanitary work which was formerly not done at all, or done imperfectly by the local governments. From a sanitary standpoint most of the work thus done has been extremely beneficial. The control of local appointments thus far seems to have been satisfactory, and it may fairly be said that the more local officials, at least in small communities, are subject to state supervision, the better are their duties performed. The systemizing of quarantine, the preparation for epidemics, the establishment of diagnostic laboratories, the control of food, milk, and water supplies, and sewage disposal, and the registration of vital statistics, would all have largely been left undone if it had not been for the part taken by the state. Some matters such as the construction of state hospitals for consumptives, and the production of antitoxins, have not yet passed the experimental stage, though both seem promising fields for state work. About the only specific criticism which the writer would make of state sanitary administration, is concerning trade licenses. On the whole then the direct results of centralization have been good.

The arguments which can be most effectively advanced against this centralizing tendency are academic rather than practical, and before an association of this kind ought not to be discussed by one who is merely a health official. Coming from a section where the towns come first, and the state after-

wards, and where the local units have always been intensely jealous of any invasion of their sphere of activity, the writer was formerly much impressed by arguments for home rule and which would put as many administrative duties as possible on the towns, and as few as possible on the state. But even if the state should take a still larger part in municipal affairs,there would, with the rapid increase which is taking place in municipal functions, be plenty of administrative work left to be done, so that there would be no danger of the atrophy of the civic virtues from lack of opportunity. Moreover, there is more to be said in favor of centralization in sanitary affairs than in some others. Public health work is directly dependent upon the police power, and this power is vested in the state, and in order that it may be exercised uniformly, and that it may not be interfered with by local interests, there is good reason why all forms of police administration should be retained by the state. At all events the writer has of late years been so impressed with the practical benefits of state administration in sanitary affairs, and so little impressed with theoretical arguments against it, that he would not oppose its extension wherever it promised to give good results.

STATE SUPERVISION OF LOCAL FINANCE.

JOHN A. FAIRLIE.

Mr. Bryce cites as one of the merits of our federal system of government, that the separate states can try experiments in legislation and administration; and that other states profit by the experience of those who first introduce new methods. Both of these statements can be supported by important evidence; but the benefits derived in this way have been much less than they might have been, owing to the lack of means for bringing the results of experiments in one state to the attention of other states. This Association can in some measure supply this need, and reduce the enormous waste in experimental legislation, by furnishing a clearing house for the interchange of notes on the work of the various states. And

this paper is a small contribution in that direction, calling attention to some significant legislation in a number of states, and showing the correlation of measures apparently unconnected.

Local administration in the United States during the first half of the nineteenth century developed steadily in the direction of a completely decentralized regime. Our constitutional system inevitably made the local authorities subject to the state legislatures; and there was always a large amount of legislative control limiting the scope of local action. But within the limits of powers conferred by the legislature there came to be no administrative supervision over the acts of the local officials.

During the last half century there has been in evidence a counter wave, making its way slowly and with difficulty, and as yet far from overcoming the earlier tide; but nevertheless gaining in force as time goes on. In many branches of administration there have been established state officers and boards with varying powers of inspection and supervision over local officials. This has been the case in the field of health regulation (of which we have just heard), in charity administration, in school management and in local finance.

It is with the movement towards state administrative supervision in the last named of these fields that this paper is concerned. It is proposed, first to describe what has been accomplished in those states where most has been done; and then to consider the general principles of a wise policy in this matter. What has been done has been mainly in reference to Taxation and Accounting. What will be said as to a general policy will consider also the question of local indebtedness.

TAXATION.

Local authorities in this country have only such power of taxation as is conferred by the legislatures. And as yet no local authority in this country has been given power to determine for itself what kind of taxes it should levy, but may levy only those taxes specifically authorized by statutes. There is therefore no room for administrative supervision in this direc-

tion, since the local authorities have no sphere of independent action.

As to the rate of taxation local discretion is also closely limited. For some taxes, notably the tax or license for the sale of liquors, the state law specifies the rate as well as the nature of the tax. For the general property tax more leeway is given; but on the one hand the local authorities are compelled by statute to levy taxes to meet certain expenditures, and on the other hand are usually restricted as to the aggregate tax rate; and between this Scylla and Charybdis a narrow course must often be steered. Under these circumstances again there is little opportunity for administrative supervision; and none has developed.

When, however, we turn to the assessment of property for the general property tax, we find a wide field for local discretion, and in recent years significant steps in the direction of administrative supervision. Under the methods prevailing in the early part of the nineteenth century, local assessors had complete freedom in the valuation of property, not only for local taxes but also for state taxes. It was in reference to the state taxes that the first step was taken in the direction of administrative supervision. Beginning apparently in Ohio in 1825, state boards of equalization have been established in most States, with power to change the aggregate valuation of counties so as to equalize the apportionment of the state tax. These state boards of equalization differ widely in their organization; but none of them have the necessary means to perform their work satisfactorily. In some states they have been composed only of *ex-officio* members, elected to other positions, and therefore unable to give much attention to their duties in regard to assessments. In several states the boards are composed of a large number of members, elected in local districts, who give only a small part of their time to this service,—the extreme case being found in Ohio, where it is composed of forty members, who meet once in ten years. In a few states, as New York and California, there is a small number of salaried members, giving most of their time to this work and that of direct assessment; but even in these cases it is

impossible for the board to make a complete investigation of the local assessments that would be necessary for an accurate equalization.

Tax commissioners and economists have discussed at length the failures and defects of these boards of equalization. Moreover they do not come strictly within the subject of this paper; and have been noted simply as the first stage of supervision which paved the way for later centralizing developments. We may therefore proceed to consider the latter, considering them in the logical rather than in their chronological order.

It may be noted here that these centralizing tendencies in relation to local taxation have been but one aspect of more general changes in the tax laws. And it may be said that it was only after the States had introduced some control over the administration of assessments for state revenue, that the importance and complexity of the work of local assessors and the need for effective supervision over their local duties was understood.

Effective state supervision over local assessing officers seems to have been first established in Indiana. In 1891 there was established in that state a State Board of Tax Commissioners, consisting of two salaried members in addition to the *ex-officio* members of the former State Board of Equalization: to prescribe all forms of books and blanks used in the assessment and collection of taxes; to construe the tax and revenue laws of the state and give instructions to local officers when requested; and to see that all assessments of property were made according to law; and to visit each county in the state at least once a year to hear complaints, collect information and secure compliance with the law. Besides carrying out these mandatory powers, the State Tax Commissioners have since 1894 annually called the county assessors of the state to an annual conference.[1]

In 1896 a board of Tax Commissioners was established in New York with somewhat less authority including the power to investigate and examine methods of assessment within the

[1] Rawles: Centralizing Tendencies in the Administration of Indiana, 273, 276.

state; to furnish local assessors with information to aid them; and to ascertain whether the local assessors faithfully discharged their duties.

A Michigan statute of 1899 provided for a board of Tax Commissioners with power: to exercise general supervision over the local assessing officers; to confer and advise with them as to their duties; to visit each county in the state once a year, to hear complaints and secure the full assessment of all property in the state. They were also empowered to summon and examine witnesses under oath, to inspect the local assessment rolls, to change the assessment and to add to the rolls property not assessed.

And a Wisconsin statute of the same year provided for a Tax Commissioner with two assistants to have general supervision over the system of taxation throughout the state, with specific authority to require reports from local officers. Two years later added powers were conferred: to supervise local assessors and boards of review; to advise and direct local assessing officers, and to initiate proceedings to enforce the laws against negligent or delinquent officials; and to visit the counties and investigate the methods of local assessors. Another statute of 1901 created the new office of county supervisor of assessment, with powers of supervision over town and city assessors.

These administrative measures have not solved all of the difficulties connected with the assessment of property for taxation; but in most of these states they have brought about a decided improvement both in methods and results. Statistical results are less striking in New York than in the other states, partly perhaps because the powers of the state tax commissioners are less, and partly because of the subsequent development of special taxes for state revenues which has apparently caused a relaxation of the supervision of local assessments, now used mainly for local purposes. But in Indiana the assessed valuation of real estate was increased by 44 per cent. in one year after the new system went into effect.[2] In Michi-

[2] $553,937,744 in 1890; $898,600,323 in 1891. Rawles, 276.

gan the assessed valuation of property has increased over 60 per cent. from 1899 to 1903.[3] And in Wisconsin where the most thorough system of supervision has been established, local assessments more than doubled in three years.[4] And it may be further noted that in each of these three states the aggregate assessed valuation of property is from 30 to 50 per cent. larger than in the neighboring state of Illinois, whose population and wealth is more than double that of the other states, but where there is no efficient system of supervision.

Years before these recent measures for the supervision of local assessors there began the policy in many states of a more complete centralization in the assessment of special classes of property, especially railroads and more recently other transportation companies and also telegraph and telephone companies. In fact only in Rhode Island, New Mexico and Texas are railroads still assessed only by local authorities. In some cases this centralization of assessment has been part of the movement to secure such taxes for the state treasury; but in a number of states—notably in Indiana and Illinois since 1872—the state assessment of such property has been used for purposes of local taxation. Usually this centralized state assessment has been established only for the property of corporations extending over a large number of local taxing districts; but in New York, under a law of 1899, the state Tax Commissioners assess for local taxation the value of special franchises in the public streets, which are for the most part held by local companies; and in 1901 the Indiana Tax Commission was given charge of the assessment of street and electric railways. The New York Franchise Tax Law has been of great value in drawing attention to a large amount of wealth that had previously escaped taxation; but it may be questioned whether the separation of the franchise from other property elements or the complete centralization in the assessment of distinctly local property is necessary or altogether

[3] $968,189,097 in 1899; $1,537,355,738 in 1903.

[4] $648,035,848 in 1899; $1,369,811,147 in 1902. Report Wisconsin Tax Com., 1903, p. 10.

advisable. In other states the value of such special franchises is now often included (without additional legislation) in the general assessment of the owners in the ordinary course of valuing property for taxation.

AUDITING AND ACCOUNTING.

State supervision over local accounts is as yet less developed than state supervision over local assessments. This is perhaps not surprising in view of the fact that in most States the accounts of state finances are very far from satisfactory. It is true there have been state Auditors and Comptrollers since the establishment of state governments—and in some cases similar officers in colonial times. But the functions of such officers have often been limited; while primitive methods of book-keeping established in the days of insignificant financial transactions have remained in use after expenditures have come to be counted in millions of dollars, and in the face of the development of systematic accounting in private and corporate business. Indeed the imperfect and inadequate accounting methods of the larger cities have often been somewhat better than those of the states within which the cities are located.

But within recent years there have been significant measures taken both to establish satisfactory accounting systems for the state finances, and also to establish state supervision over the accounts of local officers. It is only the latter part of this development that can be here considered.

Massachusetts seems to have been the first state to have undertaken any effective control over local accounts. And here the supervision has been confined to officers of the counties, which in that state have never developed any vigorous local autonomy. Thus appropriations and tax levies for each county except Suffolk have long been voted by the legislature, although this is largely a matter of form and the estimates and proposals of the county commissioners are regularly adopted. In 1879, however, the commissioners of savings banks were authorized and required to inspect the books and accounts of most of the county officers, with power to require

uniformity in methods of keeping accounts and financial reports in accordance with prescribed forms. In 1887 the state supervision was made more effective by placing it in the hands of a newly established office of controller of county accounts, whose duties included the accounts of some officers previously exempted.

Valuable results have come from this supervision of county accounts. Irresponsible methods disclosed in the 70's have been corrected; and important reforms have been introduced. Governor Bates two years ago testified to the good that has been devised from the uniform system of accounting established in the counties;[5] and endorsed a similar supervision over municipal accounts.

One of the youngest states in the far west was the next to follow up these partial measures of the old Puritan Commonwealth, by establishing a comprehensive system of state supervision over local accounts. The Constitution of Wyoming, adopted in 1890, provided for the office of State Examiner to examine the accounts of certain state officers, clerks of courts, county treasurers and such other duties as the legislature might prescribe. This was followed by the enactment of statutes, which before long placed under the supervision of this officer the accounts of every public officer in the state handling public funds; authorized him to establish a uniform system of book-keeping by the state and local officials, and to examine their accounts; and made provisions for further action in cases of defalcation discovered through his examinations. The same officer has also supervision over banks and other private financial institutions.

"The examination of public accounts is technical and embraces the checking of every item whether great or small, the subsequent footing of the cash accounts, and finally their summation. Every account paid is closely examined, the nature of the expense ascertained, the legality of the bill inquired into, and the amount is finally checked to the stub of

[5] R. H. Whitten: Administration in Massachusetts, 149-151 (Columbia University Studies in Political Science, vol. 8). Annual Message of Governor Bates, January 8, 1903.

the warrant issued, and also entered in the proper column of the expense register. Whether or not the officer conducted the affairs of his office in conformity with the statute is also made a subject of inquiry.

"The examination made, a written report setting forth the results accompanied with criticisms, requirements and recommendations is prepared and filed with the Governor and a copy thereof filed with the officer or officers whose accounts were the subject of investigation. Should it appear that there had been violations of law in the conduct of any office, the examiner must report thereon, and he has authority to enforce his rulings. In case of defalcation or embezzlement, his findings are absolute, until reversed by the district or other court having jurisdiction.

"In case of the default of any treasurer and the inability of such officer to replace funds illegally used within the time designated by the examiner, the examiner shall at once assume charge and in all respects he becomes the legally constituted treasurer of the state, county, municipality, or school district, as the case may be.

"Another important feature is the meeting of the examiner with the constituted boards authorized to make the annual tax levy. At such time the expense budget for the ensuing year is carefully canvassed and reductions made wherever possible. This paves the way for a reduced levy of taxes, and frequently the total levy may be reduced from one-fourth to one mill or more as compared with the previous year." [6]

Striking evidence may be adduced of the benefits resulting from this system of supervision in Wyoming. In 1892 the expenditures of the twelve counties in the state were $412,000, while only two counties were on an approximate cash basis, the others generally allowing their expenses to exceed their revenues and issuing illegal warrants to pay bills. In 1899, with thirteen counties, the total expenditures had been reduced to $295,000; and every county was on a cash basis with

[6] H. B. Henderson, in Nat. Mun. League, Conference in Good City Govt., 1900, pp. 251-252.

a surplus at the end of the year.[7] Several Governors of the state have specially commended the work of the State Examiner in their messages to the state Legislature.[8]

Other states near Wyoming soon followed its example to some extent. Montana and North Dakota have each created the officer of State Examiner, with power to examine books and prescribe accounting methods in county officers, as well as state institutions. South Dakota, Nebraska and Kansas have provided a less effective supervision,—in the two first named through the State Auditor; in the last named through a State Accountant.[9] More recently (in 1903) Nevada has established a more intensive system of control. A State Board of Revenue must approve the debts of local governments, prescribe the forms for financial reports to the State Comptroller, and employ an examiner to inspect the accounts and records.[10] And in the same year the extreme southern state of Florida created the office of State Auditor, whose chief duty is to prescribe the form of county accounts and see by inspection that they are properly kept.[11]

In the State of New York something has been accomplished in the same direction. Beginning in 1892 the State Comptroller has been given power to audit certain accounts of county treasurers, including the court and trust funds and the accounts for the inheritance tax; while the State Excise Commissioner has similar authority over the accounts for the liquor tax. The introduction of the Comptroller's audit disclosed inextricable confusion in the various accounts of county treasurers, and that within a few years before there had been defalcations or shortages in thirty-three of the sixty counties in the state. A uniform system of book-keeping has now been introduced for these special funds, which with the

[7] H. B. Henderson, in Nat. Mun. League, Conference in Good City Govt., 1900, p. 251.

[8] Governor Wm. A. Richards in 1899, and D. F. Richards in 1903.

[9] Nebraska, Laws of 1893, ch. 15; Kansas Laws of 1895, ch. 247.

[10] Laws of 1903, chs. 78, 123.

[11] Laws of 1903, chs. 14, 71.

regular audit discovers and often prevents deficits and defalcations.[12]

In 1903 a statute was enacted requiring all cities in the state with less than 250,000 population to make uniform financial reports to the Secretary of State. But as no provision was made for uniformity of accounts or for an examination or audit of the books of the city officers nothing has as yet been accomplished under this provision.

Until two years ago this movement towards state supervision of local accounts was confined to the less important states and to such partial measures in the larger states as have been noted. But in 1902, the state of Ohio enacted the most important law on the subject yet adopted. This provided for a uniform system of accounting, auditing and reporting for every public office in that state, under the supervision of a newly established bureau of inspection in the office of the Auditor of State. The act requires separate accounts for every appropriation or fund, and for every department, institution, public improvement, or public service industry; provides for full financial reports to the Auditor of State; and authorizes annual examinations of the finances of all public offices, with power to the examiners to subpoena witnesses and examine them under oath.

To carry out the provisions of the act three deputies and a clerk were appointed by the Auditor of State, all of whom were former county auditors and experienced in local methods. These, with the assistance of expert accountants who had given special attention to municipal accounting, and after a thorough investigation of existing practices, prepared complete systems of accounting which have been installed throughout the state in the offices of county auditors and treasurers, city auditors and treasurers, village clerks and treasurers, school district clerks and treasurers, and township clerks and treasurers. The first examinations of the accounts are now being made by the examiners of the bureau; and from their reports comparative

[12] Fairlie: Centralization of Administration in New York State, pp. 185-186 (Columbia Univ. Studies in Political Science, vol. 9).

statistics of local finances covering the whole state of Ohio will be published.

This brief description of these various measures must bring into clearer light their significance and the tendency which they illustrate. No one considered by itself, nor even all that has been done in any single state, may seem of very large importance. But when the detached and apparently disconnected pieces have been brought together, it must be evident that in the aggregate they indicate a distinct movement towards state supervision of local finance. We may therefore inquire into the rationale of such a movement, and consider to what extent it should be encouraged.

In some respects the movement may seem in conflict with general principles which are still declared to be fundamental in our American system of government. It must be admitted at least that it is not consistent with the most extreme demands for local autonomy; and that state control is not so clearly justified in this field by a general state interest, as is the case in state supervision of health administration, schools, or the local management of state finances.

If however, instead of unreasoned ideas, we apply the principles of such political thinkers as John Stuart Mill and Henry Sidgwick, it will be seen that this movement is in entire accord with a rational political philosophy. These writers recognize fully the advantages of locally elected authorities for matters of local interest, as well as for the sake of the political education of the people. But they also point out the advantages of central supervision, not only where the interests of the larger governmental units are directly concerned, but also because of the more complete information and the larger degree of technical efficiency which the higher government can command.[13]

Both of these latter factors support state supervision in the two branches of local finance that have been noted. The as-

[13] Mill: Representative Government, ch. 15. Sidgwick: Elements of Politics, ch. 25.

sessment of property with any approach to equality of treatment calls for a high degree of expert skill, and the comparison of conditions over a wide area. A uniform system of accounting is essential for accurate information on public expenditures, and for the comparison of outlay with returns in the many branches of local administration. And state control over the accounts of local public authorities is certainly as important as the control that has been established in most states over the accounts of private corporations, such as railroads, banks and insurance companies. It may also be noted that the state supervision established over local finance does not restrict local management where local control is essential,—in determining the amount and distribution of expenditures.

In conclusion attention may be called to another branch of local finance where a system of state administrative supervision is urgently needed,—over the loans and debts of local authorities. The need for some control here is already recognized in the constitutional and statutory debt limits established. But these arbitrary limits do not and cannot adjust themselves to the varying needs and conditions of different local communities. There is a great difference between a debt incurred for water works, which will be met by the revenue from the undertaking, and a debt for parks which must be paid from general taxation, and a debt for street paving that may be worn out in ten years. To decide whether additional debt may be safely incurred can be determined wisely only after a careful examination of a complex financial situation, involving a study, not merely of the aggregate amount of existing debt, but also of the provisions for meeting this debt and of the resources of the local government concerned. Such an examination requires expert technical knowledge, which is entirely absent from the present crude legislative limitations, and can only be supplied by a permanent administrative authority.

THE REORGANIZATION OF LOCAL GOVERNMENT IN CUBA.

L. S. ROWE.

The staunchest partisans of Cuban independence viewed with some misgiving the withdrawal of American control over the internal affairs of the Island. Thirty-five years of insurrection were not calculated to develop those civic qualities which lie at the basis of a stable, orderly and efficient government, especially when we keep in mind the fact that under Spanish rule the native population was systematically removed from contact with public affairs. During the period of American military occupation no branch of the public administration presented greater difficulties than the management of municipal matters. The people expected that the intervention of the United States would soon be followed by the grant of a wide measure of autonomy to the municipalities. It is a curious fact that all the Latin American peoples regard municipal autonomy as the principle upon which the political system of the United States rests, and it is therefore taken for granted that the extension of American influence means the emancipation of local government from central control. Even the more conservative Cubans felt that the centralization of the Spanish system was at an end. The Secretary of State under the American military government gave expression to this sentiment in his report for the fiscal year 1899-1900, when he said: "It is not meet that in a liberal and decentralizing régime, which is to acknowledge the personality of municipalities as one of the organs of the State, the municipal corporations, even though they are of popular and elective origin, should become agents of the central government."

As soon as it became apparent that the American military governor was determined to maintain control over the administrative affairs of the towns, a wave of disappointment amounting almost to indignation swept over the island. "Have all the years of effort to rid ourselves of Spanish rule," it was

asked, "resulted in nothing more than the substitution of American for Spanish tyranny?" "Are we never to escape from the administrative despotism which we hoped had been brought to a close through the friendly intervention of the United States?" These and similar questions constantly asked, served in no small measure to arouse distrust of the American government and strengthen the agitation for the immediate establishment of an independent republic.

It was evident to every impartial observer of the situation that any attempt to meet the demands for local independence would entail disastrous consequences. Not only did the municipal authorities lack experience in the performance of the elementary public services, such as street-cleaning and sanitation, but there was also a total absence of definite standards of local public opinion—the two elements necessary for the successful working of a decentralized administrative system.

The system of local administration which the American military government found in force was based on the Spanish law of June 28, 1878. This law deserves special attention because it is in many respects a most characteristic piece of Spanish legislation. It was framed ostensibly in a liberal spirit and was heralded as an epoch-making step towards local autonomy. The town council was made elective with a membership varying according to the size of the municipality. It was also provided that the council should have power to propose candidates from amongst its members for the office of mayor.[1] The same article practically nullified this power by permitting the governor-general to reject all such proposals and to select for the executive head of the city any member of the council, or any citizen of the town, or any person whom he might deem fit, even if such person was not a resident. The fact that the mayor was removable at will placed the executive authority of the towns at the mercy of the central government. Municipalities were divided into districts or wards, at the head of each of which a district executive appointed by the mayor was placed. The mayor was made *ex-officio* presiding officer of the council.

[1] Article 49.

In addition to the mayor and council there was a third organ of local government known as the Municipal Junta. This junta or board was formed by associating with the mayor and council an equal number of taxpayers appointed by the governor-general. Its main function was to grant or withhold final approval of the municipal budget. The central government was, therefore, able to control the legislative branch of the municipality in its most important function—the disposal of revenue. The executive branch of the government was completely at the mercy of the governor-general. In fact, the mayors, as well as the district executives, were regarded as political agents of the governor-general.

It is not surprising, therefore, that with such complete control established, the powers granted to the municipalities were relatively broad. Article Sixty-nine of the law of June 28, 1878, enumerates these powers in general terms, thus allowing the municipality to exercise all powers not inconsistent with the laws of the State.

In order to ascertain the full extension of central control over the municipalities under the Spanish system, it is necessary to examine the provincial law and the law of public works, as well as the municipal law. In these laws we find enumerated in detail the cases in which the decisions of the municipal council must be submitted to the central government for approval. While therefore a cursory examination of the municipal law seems to indicate that wide freedom of action was allowed the municipalities, a more careful examination discloses the fact that comparatively little independent action was permitted.

Under the system in force at the time of the landing of the American troops, the highest administrative supervision was exercised by the governor-general through the secretary of state and government. Subject to his immediate control were the civil governors of the six provinces, to whom in turn the officials of the one hundred and twenty-eight municipalities were responsible. The two Eastern provinces—Santiago de Cuba and Puerto Principe—although representing fifty-seven per cent. of the total area of the Island, contained but twenty-

two municipalities; while the four Western provinces—Havana, Pinar de Rio, Matanzas and Santa Clara—although representing but forty-three per cent. of the total area, contained one hundred and six municipal corporations.

This multiplication of municipalities beyond all reasonable needs was due to the fact that under the Spanish system the municipal authorities were political agents of the central government. The multiplication of local centers was therefore one of the means of strengthening the control of the State over the political activity of the inhabitants. Such domination acquired special significance after the outbreak of the revolution of 1868—in fact, it was regarded by the Spanish authorities as one of the most important means of checking the spread of disaffection.

The American military government realized that it would be necessary to reduce the number of municipalities, but the first definite move in this direction was delayed until January, 1902, owing to the necessity of first reorganizing the system of local finance. An order was then issued which consolidated a number of adjacent communities, reducing the total number by one-third. Under Spanish rule the municipalities derived the larger part of their revenue from taxes on the necessaries of life, which bore most heavily on the poorer classes and were regarded as peculiarly obnoxious and oppressive. A military order of March 25, 1900, abolished the "consumo" taxes with the exception of the tax on fermented and distilled liquors. Although this step marked a distinct advance towards a more equitable system of taxation, its immediate effect was completely to cripple the municipalities. The central government found itself obliged to take over all the fundamental local services such as sanitation, police, public education and charities. Almost without exception the municipalities were bankrupt. At the close of the first year of American occupation, the central government, after performing all the important local functions, was called upon to pay municipal deficits amounting to nearly three hundred thousand dollars—all incurred during the fiscal year.

The situation was complicated by the popular clamor for

the election of municipal officials. From the beginning of American occupation until July first, 1900, municipal officials were appointed by the military governor. In June, 1900, the first local elections were held. These elections were interpreted by the people to mark the beginning of municipal autonomy. To have heeded the general demand would have meant anarchy in administration and would probably have resulted, because of the neglect of public sanitation, in a serious menace to the health of the Island. Fortunately the government was able to withstand the pressure, although at the cost of much of its popularity.

In the capital city the power of the central government was so complete as almost to supplant the local authorities. From January first, 1899, to June thirtieth, 1900, the State treasury expended nearly five million dollars on public works and the maintenance of municipal departments in the city of Havana. In fact, not only in the capital city but throughout the Island, the influence of the military government in improving the efficiency of municipal services was distinctly felt; but such services were performed either directly by the central government or under its immediate supervision. When, therefore, the United States withdrew from the Island the towns were in a fairly satisfactory condition so far as sanitation and the protection of life and property were concerned. Their civic life, however, was still undeveloped. Those in closest touch with Cuban affairs saw that with the establishment of the new republic, the most serious questions would present themselves in connection with administration of municipal affairs.

The stability and financial standing of the central government were practically guaranteed by the United States under the provisions of the Platt Amendment. Furthermore, much had been done to acquaint the Cubans with American methods of administration. An interest in the civic affairs of the Island had been aroused which prepared the way for the successful operation of the institution established under the new constitution of the republic. All this stood in marked contrast with the condition of the municipalities, in which it seemed impossible to awaken a sense of responsibility to the obliga-

tions created by national independence. In the constitutional convention local government received considerable attention. The more radical element felt that there must be a complete break with Spanish tradition and that the constitution should provide a scheme of government in which the autonomy of the municipalities would be fully safeguarded. If any control were to be exercised, it was contended that such authority should be vested in the elected representatives of the people in Congress assembled and not in executive officers. The American system of local government was constantly cited as the model after which the institutions of a free country should be patterned. There was a widespread feeling that the continuance of any system of control through executive officials would mean the perpetuation of the same kind of arbitrary authority from which the country had suffered under Spanish rule. It was expected that the convention would sweep away the highly centralized Spanish system and incorporate into the new constitution a system of local government which would insure local autonomy. As soon, however, as the convention began to consider definite plans, the widest differences of opinion presented themselves. These differences proved irreconcilable and finally led the convention to adopt a compromise under which it restricted itself to the insertion of a few fundamental principles in the constitution, leaving the details of municipal organization to be determined by the Congress.

The most important changes introduced by the new constitution were: (1) the provision for the election of mayors, and (2) the more definite limitation of the administrative powers of the provincial governors and of the President of the Republic over municipal affairs. Article one hundred and eight provides that the governors of the provinces and the President of the Republic may only suspend the execution of municipal ordinances and resolutions when such ordinances violate the constitution, treaties, or laws of the republic, or are contrary to the policy of the provincial council. The courts are empowered to determine in last resort whether the grounds of such suspension are valid. It was hoped that with these restrictions it would be possible to eliminate arbitrary interfer-

ence with the affairs of the municipalities and thus permit the development of a certain measure of local home rule. Although the leaders were conscious of the fact that but a part of what they had hoped to accomplish had actually been achieved, they felt that an important step had been taken towards giving the Cuban municipalities a position similar to that occupied by cities and towns in the American political system.

This constant desire to transplant, not the actual American system, but rather those principles of government which the political leaders of Cuba believed to be characteristically American, lends a peculiar interest to the development of municipal institutions during the first years of the republic. It would be difficult to find a better instance of the conflict between tradition and conscious purpose. The leaders in the work of civic reorganization were determined to put an end to the highly centralized administration of Spanish times but in the actual development of the system the force of tradition has proved stronger than conscious purpose. Although the municipalities enjoy more extensive powers in law, in fact they remain subservient to the central government. There has been a noticeable tendency to give the broadest interpretation to the powers of the central government. In a number of instances, provisions of law have been invoked for the purpose of maintaining control over local affairs, which were never intended to receive so wide an interpretation. The most striking example is the use that has been made of a civil order issued by General Wood [2] in April, 1902, the purpose of which was to reorganize the fiscal management of the Cuban municipalities. It provided that in all municipal budgets, receipts and expenditures must be balanced and no obligation shall be contracted nor payment made which is not therein included without express authorization in each case from the governor-general of the Island. The procedure to be followed in the drafting of the budget, its form, the method of bookkeeping, and the plan to be followed in the disbursement of moneys, were prescribed in detail. A provision which

[2] Civil Order No. 112.

at the time attracted but little attention but which was destined to be of far-reaching importance is the requirement of Article Nine, which makes it the duty of local authorities to submit a certified copy of the budget to the Insular Department of Finance. The secretary of finance is given power at any time within one month after the receipt of the budget to suspend the execution of such items as may violate the provisions of the order and at the same time to determine the modifications necessary for its enforcement. This provision has given the central government wide powers of control over local finances. When the municipal budgets are submitted, the central authorities do not content themselves with a formal examination to ascertain whether an equilibrium has been established.

An excellent illustration of the exercise of this power is to be found in a recent controversy between the municipality of Havana and the President of the Republic. In the city's budget for the year 1904-05 the city council considerably increased the number of officials in the city departments, involving an additional expenditure of nearly $29,000 ($28,235.49). Another item provided for the expenditure of $209,737.92 in part payment for certain lands. The council had also decided to purchase the franchise and water works of a company in one of the outlying districts for which $600,000 were to be paid; the budget for 1904-05 providing for a first payment of $200,000. When this budget was submitted to the central government it was found that both the council and the city treasurer had estimated a probable income which was considerably in excess of the amount collected during the year 1903-04. This estimate was in direct violation of Military Order 112, 1902, which provides that the receipts shall be estimated on the basis of the collections made in the preceding fiscal year. The central government took the view that if receipts were calculated on the basis prescribed by law, the income of the city for the year 1904-05 would not be sufficient to meet these expenditures unless the amounts appropriated for other distinctively local services were seriously reduced. Inasmuch as this reduction would cripple the muni-

cipality in the performance of some of its most important services, the central government informed the municipal authorities of Havana that the three items above mentioned would have to be eliminated from the budget. The municipal authorities entered violent protest against what they regarded as a usurpation of local powers but the central government has firmly held to the position which it has taken.

This instance, which is but one of a long series that have occurred since the establishment of the republic, illustrates the difficulties that would arise if, after four centuries of administrative supervision, all central control were to be abandoned. It is clear to every observer of Cuban conditions that if this control is now removed, many of the municipalities will gradually drift into bankruptcy, partly because of the inexperience of the local authorities, but mainly owing to the traditions inherited from Spanish times. These traditions lead the party in power to maintain its influence by expending as large a proportion of the revenue as possible in increasing the pay-rolls of city departments.

The successes, as well as the failures of the Cuban government in the attempt to develop more vigorous local institutions, throw an interesting side-light on some of the fundamental problems of political science. The first and most important question presenting itself is whether the system of local government as organized in the United States requires for its successful operation a combination of qualities peculiar to Anglo-Saxon peoples or is it a form readily adaptable to other races and nationalities? If our local institutions are fundamentally out of harmony with the political traits of the Latin-American peoples, the movement to imitate the institutions of the United States, which is more or less marked throughout the Latin-American countries, is likely to be fraught with serious consequences. The history of France and Italy furnishes abundant illustration of the danger arising out of the lack of harmony between political form and political tradition.

What, then, are the qualities which we regard as necessary

to the successful operation of a decentralized administrative system? A brief analysis will show that they are the result of certain forces in the history of the English people which have developed an attitude towards government essentially different from that of the people of Continental Europe. In England, individual liberty was secured by the common people as the result of a struggle with the Crown and it was only retained at the cost of constant watchfulness and alertness. In this struggle the minor judiciary and the lower administrative officials gave support to the popular cause. Thus the people became accustomed not only to regard their liberties as rights which they themselves had secured but also as local administrative duties over which they must necessarily maintain close supervision. In this way they developed that familiarity with public matters which enabled the citizen to deal with the affairs of government as confidently as with his ordinary business affairs. The system was built on the principle that responsibility for the correction of abuses rested with the community.

The course of events in the Latin countries of Europe was essentially different. The struggle against special privilege was waged by the Crown against the nobility. The common people did not wrest individual rights from the Crown but were *granted the privilege* of enjoying a certain measure of individual freedom.

This distinction expresses a difference in institutional development which has left a deep impress on national character. In England, and in the people that have inherited English traditions, there is a deeply rooted conviction that local liberties have been the reward of a long struggle and that the responsibility for their safeguarding rests with the community. Interference by any outside authority, especially if such authority be the executive branch of the government, is viewed with distrust and immediately arouses concerted opposition. This is the real basis of local self-government. It is true that the alertness to local liberties has been greatly weakened in our larger cities and in order to gauge its true strength we must study the attitude of the smaller communi-

ties. In New York, Philadelphia and Boston, local self-government has been undermined to such a degree that it is hardly more than a name. But this exceptional situation must not blind us to the fact that the principle of local self-government is still one of the dominant ideals of the vast majority of American communities and that the traits of national character upon which this principle rests are still strongly marked.

The peoples of Latin-America have inherited totally different traditions from Spain. In the mother country the fact that the common people did not participate in the struggle for liberty has exerted a determining influence on the attitude of the population towards government. Individual rights were *granted* by the government instead of wrested from it and are now construed as a gift from the central authorities upon whom the duty of protecting them rests. In fact, the people have greater fear of a tyrannical exercise of power by the local than by the central authorities. In the countries of Latin-Europe, as in the countries of Latin-America, we constantly find the people appealing to the State government for protection against alleged arbitrary action of local officials.

We are here face to face with a fundamental difference in the attitude towards government, which goes far to explain the inability of the Latin-American people successfully to operate a system of local government that is based on the principle of individual assertiveness and of political responsibility. No matter how explicit the constitutional or legal provisions intended to secure freedom from interference by the central government in local affairs, the tendency to look to the State authorities for guidance immediately shows itself. If the legal obstacles are such as to make it difficult to secure such guidance, local policy drifts and local services soon descend to a level of inefficiency which makes the interference of the central government necessary in order to protect the health and welfare of the State as a whole.

This necessity brings into sharp relief the danger involved in the attempt to transplant institutions which are out of harmony with the traditions and training of a people. It further illustrates the fact that however strong the desire to trans-

plant the institutions of another country, unless such desire be in harmony with race tradition and training, the adoption of foreign forms will do little more than furnish a new channel through which the settled traditions of the people will find expression. The history of local institutions in Cuba is significant because of the fact that in spite of all attempts at decentralization, Spanish administrative traditions are still dominant. This fact alone is fraught with a deep lesson. It points clearly to the truth that however strong the admiration of the Cuban people for American local institutions, it is unsafe to attempt to transplant them until the Cuban people have developed a different attitude towards government. Any attempt at such transplanting must prove ineffectual because under the form so established the older Spanish tradition will soon assert itself.

The only fruitful line of development will be a gradual modification of local institutions with a view to fostering those qualities that have enabled the people of the United States to make local self-government the foundation stone of the American system. For a long time to come the Cuban government must exercise a control over the municipalities which shall exact from them a certain minimum standard of efficiency. The consistent maintenance of such standards will in time develop a body of local public opinion which will prepare the way for administrative decentralization.

DISCUSSION.

WILLIAM A. SCHAPER: The papers we have just listened to are clear and accurate accounts of actual conditions. They are hardly debatable. I will, however, take a minute of your time to emphasize a point referred to by Dr. Cleveland, namely the need of a more general diffusion of thorough information about governmental and party organization and activities and the training of a larger number of men for efficient public service.

Every one who has watched the changes that are going on in the administrative organization of our commonwealths must admit that there is a decided tendency toward centralization. The states are assuming more functions and are supervising the

work of local officers in which the public generally is concerned. There is a danger that this centralization of functions may take place before the people are ready for it. To make a centralized system a success there must be more men trained to perform public functions in a broad-minded, enlightened, efficient manner. Then there must be a wholesome, well informed and discriminating public opinion to support the hands of the men who are doing a good work in the service of the state.

So long as administrative functions are largely localized, inefficient and designing men in office are after all curbed and limited in their selfish operations; but when such functions are centered at the state capital, remote from the interested people, the opportunities for exploiting public office are far greater. As an instance in point let me call your attention to the experience of Minnesota with a state board of health. We had an efficient board, entrusted with large powers. Its personnel included physicians of the highest rank. Their special investigations into the causes and prevention of diseases among cattle have attracted marked attention among specialists everywhere. They enforced the laws against diseased cattle with such zeal that the live stock interests thought that they were losing altogether too many animals through condemnation for which the state allowed only $35 a head. These interests quietly carried the matter into the legislature two years ago. A bill was introduced innocently creating another board of health known as a Live Stock Sanitary Board whose function it now is to study and prevent diseases among domestic animals, leaving the old board in charge of the work of investigating human diseases only. But the real point of the new law is found in the clause specifying who shall constitute the board, I take it. The clause I refer to provides that a majority of the board must always be men "financially interested" in raising live stock in the state. No further comment is necessary. On the face of it this is a vicious law. It places the financial interests of the cattle men above the health of the people. It was reported to me recently that the special work on cattle diseases so well done by the old board has not been continued. We are not especially surprised.

But the point I wish to make is that unless the people of a state are well informed and enlightened on government work and the rights of the public, there is actual danger in centralization. For if men who serve special interests get control of a branch of government work reaching all over the state they have in their hands an enormous power of doing mischief. If on the other hand good men are secured for such positions and there is no enlightened public sentiment to uphold them, their hands will sooner or later be very effectually tied. The moral is that the public schools must give more time and attention, in training the youth for citizenship, to the elements of politics, government and law, before the efficiency of our governments can be much improved.

F. A. CLEVELAND: A technical discussion of the papers just presented cannot be undertaken. Both have been prepared by specialists eminent in their respective subjects, and in their treatment they have left little, or nothing, to be added or detracted. With historic and scientific accuracy two administrative tendencies have been portrayed—the one in American municipalities, the other in Spanish-American West India. Aside from the high character of the addresses referred to, the remarkable fact concerning them is, that, while they represent movements toward reform, each of these movements have seemingly been in an opposite direction. The underlying theme of Dr. Fairlie's paper is *centralized administration;* that of Dr. Rowe's is *decentralization.* In free American legislation and municipal organization is found a tendency to increase central authority; in autocratic Spanish-America the struggle is for local autonomy. Each having a common end in view, the query may be raised as to what political principal may be adduced to explain these seeming incongruities.

By way of introduction Dr. Fairlie adverted to a time when the tide of reform in the United States set in the same direction as at present it is running in Cuba and Porto Rico—when local administration developed steadily in the direction of a completely decentralized regime. Here in America, under conditions of political freedom, was a movement of the same

kind as that portrayed by Dr. Rowe amid scenes of political oppression. If, however, we look still further back in our history for the causes which set the forces at work to determine the form and character of our first constitution, they all find common origin in the exercise of arbitrary power by a foreign government dealing with her colonies. It was an outcome of the tyranny of an arbitrary court that caused the English people to assert the independence of their Parliament; it was to temper administration with justice, and with a regard for the rights of persons and of property, under the established law of the land, that caused the courts to be taken out from under the direct control of the Crown. Resistance to what the American colonies came to regard as political oppression gave to the time of our Independence the same constructive ideals; the dominant thought was protection of the individual against the powers of organized government —against irresponsible officers in control of these powers. It is in this that we find our analogies to the present decentralizing reform movement in Spanish America.

But America for a century and a quarter has been free from foreign domination. In all departments our chief officers of government have been elective. One or two generations having passed, the fear of an official oppressor was gone. Gradually another ideal began to give direction to political activity. This ideal was best expressed in such catch-phrases as "a public office is a public trust," and "a public officer is a public servant." As our society became more complex, as commerce and industry became more highly centralized, as the people came to forsake agricultural employment and to collect in large cities, public necessity and public convenience required that one function after another be undertaken by local government at common expense. Not fear of oppression, but a depressing sense of civic impotence and official infidelity— this was the circumstance that brought forcibly to the attention of the citizens the need for legal reform. This need found expression in a demand for a better adjustment of the local political organization to new ideals of welfare. The questions which citizens asked of each other, and which each

asked himself were: How may we make our municipalities more potential factors in our industrial and social life? Having gained for ourselves a responsible government, how may we attain the same standards of efficiency in public business as in private? How may we secure efficiency and economy in administration, and, at the same time, protect ourselves against official infidelity?

Our political organization of the past was found ill-suited to these ends. As a means of protecting the citizen against the possible exercise of arbitrary power, its underlying theory had been to so divide the several functions of government as to render each political division impotent to act without the support or co-operation of the other two. Under an elective system, by decentralization, it was conceived (and has been borne out in experience) that sufficient control would thus be secured to protect individual liberty and independence. The purpose was so far to weaken the powers exercised by any one branch of the government as to render it impotent to do much harm. But by the same token each branch was rendered impotent to do much good. The principal of control was not one of strict account and responsibility for malfeasance and non-feasance in office, but one of constitutional official weakness and partial departmental paralysis.

As suggested by Dr. Fairlie, the movement toward increased centralization has been one in the interest of increased efficiency. But here in America centralization has not followed the English and the Scotch models. Local conditions and those customs which have grown up around concepts of local official dignity have made the English and the Scotch mayor the chief social functionary, while the principal business and administrative functions of the municipality have been placed in the hands of committees of a representative council. Our models for administrative efficiency and control have been evolved under conditions utterly devoid of a sense of "dignity" to be supported by a popular representation—without those customs and social precedents which required an official personage to represent the community "socially." With us there has been no peculiar line of demarkation be-

tween one class of officials and another which would require that the mayor devote his time to receptions and other courtly functions and that a council of the people attend to the less "dignified" and ungenteel business of the municipality. Our models for administrative efficiency and control in municipal government are found rather in the large private corporations — institutions organized with special reference to business economy and effective control for success in which America has gained world fame.

In an American railroad corporation, for example, the operative head is its president. The Board of Directors controls in all financial matters and determines the corporate policy. This is the working ideal of the American corporation. The highest working efficiency is obtained, not by apportioning out the direction and administrative control to a number of committees responsible to a deliberate council but by giving to a single directing head the power to command and control the many corps of employees co-operating for common ends, and by holding him responsible for the operative result. That he may be able to exercise intelligent judgment in administering the business of the corporation, an efficient accounting service is installed—one by means of which he may have a complete record of financial results: he is also given a department or bureau of inspection—this is placed at his service that he may have exact information with respect to the physical, operative results; current periodical reports are required from each branch of the service that he may have before him departmental results; a bureau, or department of statistics, is kept at work co-ordinating all of the various reports, (financial, physical, operative and departmental) around the problems concerning which exact knowledge is required for the exercise of mature official discretion. To enable him to have the best discipline in the service on which he must depend for the execution of policies and administrative plans, he is given liberal powers of appointment, suspension and removal of departmental heads. And likewise, for similar purposes, the several heads of departments are given control over deputies, assistants and employees serving under them. With these

several means of information at his command, and these powers of bringing the whole personnel of corporate employment into organic corporate service, the administration of the working group is very like the direction given to the several corps of an army. The president of the corporation (the Mayor) limited only by the resources placed at his command, and guided by the announced policy of his Board (a council), as a general, may lay out a campaign, study the industrial and administrative field, the obstacles to be overcome, the opposition to be met, and may use all of the forces at his command to attain the administrative results to be desired. On the other hand, for the several members of the Board (council), the direct representatives of the stockholders (citizens), are reserved the deliberative functions. This, as Dr. Fairlie has suggested, would seem to be the significance of the great movement that is now going on in America toward centralization in municipal administration.

If we are to look for a common political principle back of the reform movement here, and the reverse movement in Cuba and Porto Rico, described by Dr. Rowe, we will find it in the political opinion of the locality where it takes form and shape in ideals of public welfare. With a people oppressed by irresponsible autocracy, the dominant ideal representing welfare is protection against arbitrary acts of Government. Its organization may be efficient, as is that of Russia, but its very efficiency when not acting in harmony with these ideals, becomes the subject of popular complaints—may even cause popular violence and political revolution. Complete political responsibility once attained and formally established, ideals of public welfare and forces of public opinion which before operated to weaken Government, now work together to strengthen its hands. That opinion which first requires subservience of the political organization to public needs, demands that the Government, as an instrument of welfare, become a powerful mechanism for the working out of the common interests in the community. The public demand is shifted, and measures of reform become the crystalized expression of the best ideals of the community striving to increase administrative efficiency, municipal economy, official fidelity and intelligent control.

Dr. Fairlie has given an account of the progress made in legal enactment and definite corporate organization. If anything may be added to the presentation, it may be in the nature of supplementing such an account by reference to some of the organized agencies that have been at work and that are still working to bring together the best thought of the many states and organized communities endeavoring to work out the problem of better direction and control in the interest of public well being—the various groups that are seeking to lend aid in crystalizing public opinion and making it an active force demanding legislation to give form and expression to the popular will.

Taking a broad view of the field, a great variety of patriotic and citizen associations must be included in a discussion of this phase of the movement toward municipal reform. Important among these are such associations as the Municipal Voters' League of the City of Chicago, which for more than a decade has labored in a non-partisan and impersonal way to promote ideals of independent citizenship, stimulate thought, and secure intelligent co-operation for the nomination and election of persons of integrity to assume the duties of office, and to execute them as a trust for the public benefit. Such societies as this have had in mind an intelligent and honest personnel—fidelity in municipal service. Other societies, like the American Civil Service League, have been co-operating to the same end for the improvement of the municipal clerical staff, through examinations as to eligibility, through promotion, and through other devices which may encourage efficient, intelligent non-partisan co-operation in public service. But confining discussion to subjects of finance and accounts: on the administrative side, public opinion has been stimulated and strengthened by the co-operation and thoughtful attention of such societies as the American Gas Light Association, the American Statistical Association, the American Society of Municipal Improvements, the American Public Health Association, the Central States Water Works Association, the League of American Municipalities, the National Electric Light Association, the American Water Works Association, the New

England Water Works Association, the New Jersey Sanitary Association, the American Economic Association, the National Municipal League, and the Bureau of Census of the Department of Commerce and Labor of the Federal Government.

Among these many associations and agencies co-operating to give form and direction to public opinion prominently stand out, the National Municipal League and the Bureau of Census —the first for its continuous attention given to the subject of municipal accounts and statistics, and the second for its splendid opportunities to collect administrative experience and to propagate intelligence by means of its field workers and through the publication of comparative statistical results. Although for five years the National Municipal League has had a Committee at work on a uniform basis for municipal accounts and statistics, and this committee has had the co-operation of representatives from various other societies, and although there has been a frequent interchange of ideas between members of this committee and the representatives of the National Government in charge of the Census work, the newness of the problem, the lack of uniformity in nomenclature and classification, the diversity of conditions in many municipalities to be considered, the rapid development in the number of functions undertaken and to be administered, still leave much to be done before a satisfactory basis for general legislation will have been attained.

In the furtherance of this educational work one of the most important events of recent years was the convention called by the Bureau of Census, and which met in Washington in December, 1903. At that time were brought together comptrollers and representatives of finance departments of many municipalities, members of committees of the various associations interested in the work. For two days the Conference continued in session, morning, afternoon and evening. This Conference now lives in a committee appointed for the purpose of considering questions for a subsequent meeting, and the hope and expectation is that, under the friendly auspices of the National Government, a meeting may be held each year, and that the various persons, committees and municipalities interested

in the promotion of thought along lines of finance-administration and accounts, may there come together and have the benefit of council as well as avail themselves of the advice of those who are continuously kept in the field by the Department of Commerce and Labor. The Committee on Uniform Municipal Accounts and Statistics of the National League has also in preparation a treatise on the subject, and it is the hope of the League that through its instrumentality the best thought on the subject of finance-administration statistics and accounts may be here made available.

If from the papers which have been presented any conclusion may be drawn which may serve as a guide for future action, it would seem to be that the laws and charter changes made in the past have followed the work of these independent agencies engaged in the formation of public opinion; that reform in popular government can never precede a well settled conviction among the peoeple and an active co-operation to secure results. Back of the law and back of constitutional changes, therefore, we must look to the agencies of political education and to those many patriotic societies which are giving form and national expression to local ideals as a basis for public law.

GOVERNMENTAL INTERFERENCE WITH INDUSTRIAL COMBINATIONS.

EDWARD B. WHITNEY.

I shall not attempt to cover the whole trust question in twenty minutes. I shall assume that, whether for economic, political, social or moral reasons, you desire some higher power to interfere with the so-called industrial trusts [1] if effective interference be practicable without doing more harm than good; and that you ask me only to express the views of a lawyer, from a legal standpoint, as to what remedies may be available to the Federal Government, which alone is strong enough to grapple with the situation.

[1] The word trust, in its modern and anomalous use, may be defined to mean a combination rich and powerful enough to affect any industry in which it is engaged, and therefore to constitute a political issue.

True, some lawyers and statesmen of the first rank still argue that all regulation should be left to the states. But they are generally elderly men, whose views became fixed under conditions that are past. No single state is strong enough now. The Constitution does not allow any group of states to form an alliance among themselves. It does not allow them to compete with each other; and too many of them compete for corporation patronage.

I shall assume that you wish me to confine myself to remedies which are direct in their operation. I shall say nothing about the tariff, or about special railroad privileges. You are the experts best qualified to tell whether the trusts that have built themselves up with the help of these advantages are now strong enough to stand without them.

I shall not discuss any proposition that requires an amendment of the Constitution of the United States. It is now more than a century since the Constitution has been amended by any method that can be repeated in the future. I doubt if there will be another amendment until there is another Constitutional Convention. Certainly there will be none until so far in the future that everything said here to-day will then be obsolete. Until then, the Federal power of regulation will apply only to the realm of commerce with foreign nations, among the several states and with the Indian Tribes. Until then, if an industrial stays at home and sells its goods there, Congress cannot reach it.

Some industrials however, like the United States Steel Corporation, engage directly in the transportation of commodities between the states. Others, like those in the anthracite coal region, are owned and operated by interstate railroad companies. All probably desire to take part in interstate commerce, in order to sell and ship their goods across state lines. There, if anywhere, is their vulnerable point.

I suppose it to be the orthodox view that the industrial trust is a product entirely of natural conditions. From this the orthodox deduction is that the trust could not have been prevented and cannot be destroyed. Let us see just how far this is true.

The industrial trust of the present day is a corporation, or a combination of corporations.[2] It could not have arisen in its present form under the common law, because the common law did not authorize individuals to incorporate themselves. That it might have arisen in some other force we may guess if we so please, but no experience authorizes us to say so. Probabilities are to the contrary. Human nature puts obstacles in the way of joining so large a number of people in a common enterprise, and keeping them voluntarily together. Fuggers and Rothschilds occasionally appear; but only in rare instances would a body of men remain amicable enough, as well as rich enough and wise enough and fortunate enough to wield such great power for a long period without some such artificial tie as a corporation charter.

And even under the earlier and simpler form of corporation, which could not merge with another company or swallow it up, experience seems to have shown that human nature afforded obstacles to the rapid and complete development of the modern trust. As a general rule, until a time within the memory of men now in middle life, two corporations could not merge or consolidate.[3] In New York, for instance, the first authority to merge manufacturing companies was in 1867. It was confined to those engaged strictly in the same industry. It was not broadened until 1892. The first similar authority as to railroads was in 1869 and confined to continuous lines. Lines merely connected were not authorized to consolidate until 1881, and then only if not parallel or competing.

Until the same period, as an almost universal rule, one industrial corporation could not hold the stock of another for control.[4] In New York, for instance, the first act enabling

[2] If there are any genuine exceptions they are negligible.

[3] 2 Morawetz on Corporations, § 940; Sugar Trust case, 121 N. Y. Reports, 582.

[4] 1 Morawetz, § 431; Elkins *v.* Camden & Atlantic R. R., 36 New Jersey Equity Reports, 5; De la Vergne *v.* German Savings Inst., 175 U. S. Reports, 40, 54-58. The Georgia Constitution of 1877 forbids this in a clause drawn up by Robert Toombs. Trust Co. *v.* State, 109 Georgia Reports, 736.

one industrial to purchase and hold stock of another was passed in 1853, permitting a manufacturing company to purchase mining stock in certain cases. The principle was extended, but in very restricted form, in 1866 and 1876. It did not become general, or permit buying the stock of a competitor, for sixteen years later still. In New Jersey the movement began in a very small way in 1883. The present statutes, which permit any company to purchase stock of a rival for control, are more recent even than the Sherman Anti-Trust Law. They were in all probability adopted, although the legislatures did not know it, for the very purpose of circumventing that law. They date in New York from 1892. In New Jersey their development was from 1888 to 1893. Before that the holding corporation, now so familiar, was a rarity.[5]

Thus all the trusts are in part a product of artificial conditions produced by human legislation, while some of the most dangerous, or at least the most unpopular, among them are a product of legislation obtained by their own lawyers and legislative agents, put quietly through under the cover of the anti-trust agitation, while the public, led by the newspapers, were looking somewhere else. None of the trusts are Federal in origin. Each derives its claims to power from the statutes of some particular state. By what right, then, can the Federal government touch them? To answer this question it is necessary for us to recall to mind a few of the elementary principles of corporation law.

Proper understanding of this matter has been obscured by the prevalence of certain notions that seem to me to be fallacies originating, like many other fallacies, out of the substitution of names for things.[6] It is common and in a sense proper to say that a corporation is a person. Really, as our courts recognize, it is a number of persons who have received from Congress, or from some other legislative body, a license to act together in a certain way. It is common and in a sense proper

[5] There were some under special charters, such as the Pennsylvania and the Southern Pacific.

[6] See authorities collected by the writer in an article on the "Northern Securities Company" in the Yale *Law Journal* for June, 1902.

to say that a share of stock in a business corporation is a piece of property. Really, it is the evidence of membership in a common enterprise. When an ordinary partnership incorporates itself, the world's valuation is nominally increased by the amount of the capital stock. Really, there is no more property in the world than there was before.

Each state, when issuing such a license, may accompany it with whatever conditions it may think best. The corporate powers may be limited. The number of members may be limited. The proportionate share which any one member is permitted to hold may be limited. His proportionate vote may be made less than his proportionate share. Membership may be restricted to citizens. Membership may be denied to foreign corporations, or to all corporations. Conversely, the right to hold membership in other corporations may be denied. All of these things follow from the fact that the whole jurisdiction is exclusively in the incorporating state, which may deny the privilege altogether. Restriction upon the amount of capital stock was in early days almost universal, and there were well known instances of a recognition of the right to restrict membership.[7]

Furthermore, these licenses given by a state are self-operative only within its borders. It is common to issue a charter authorizing the persons chartered to do business in other states, and as a general rule they are permitted by those other states to do so; but this permission is not universal and it may be withheld. For a New Jersey corporation to do business in Illinois requires the joint permission of New Jersey and Illinois, just as, when the United States sends a consul to a foreign country, he cannot act until to the commission which he brings with him he has added the exequatur which evidences the assent of the country to which he is accredited. With the

[7] The United States Bank charters of 1791 and 1816 each restricted the amount to which a single member could subscribe. The former allowed membership to "any person, co-partnership or body politic;" the latter to "individuals, companies or corporations." Both restricted the voting power of shares held in large blocks, a practice then common and analogous to that by which some recent charters, following English precedents, classify their stock, giving part much greater voting power than the rest.

single exception that I shall mention in a moment, each state can exclude from doing business within its borders all corporations but those which it has chartered, unless in some special case it may have bound itself by implacable contract not to exercise the right. It may therefore impose upon the admission of foreign corporations such conditions as it pleases;[8] and it may deny admission to all companies so constituted or controlled as not to comport with its own public policy.

Our industrial trusts have all been organized, so far as I am aware, under statutes which reserve to the legislature the right to amend, alter or repeal.[9] It is a right which belongs only to the state by which the license was issued; but the state in which the corporation does business can likewise revoke its permission to remain, or impose any conditions thereupon. It is at most requisite that sufficient time be given for the corporation to wind up its affairs without calamity.

The single exception to which I have referred is that of commerce with foreign nations, among the several states, or with the Indian tribes. Congress has the power of regulation here—a power which knows no limits except those which are put upon it by the Federal Constitution.[10] Congress itself may grant a charter of incorporation to persons engaging in such commerce.[11] A state cannot exclude therefrom any corporation which Congress permits to engage in it.[12] Congress has always given tacit permission to corporations of the various states to engage in such commerce, but I think that if it shall change this policy, and impose conditions upon the participation by a state corporation in interstate commerce, precisely as the states impose conditions upon the participation of a foreign

[8] 2 Morawetz, § 971. A striking illustration is Doyle *v.* Continental Ins. Co., 94 U. S. Reports, 535. This principle has been applied to the case of anti-trust laws in Waters-Pierce Oil Co. *v.* Texas, 177 *id.*, 28.

[9] For instances of its exercise, see Pearsall *v.* Great Northern Ry. Co., 161 *id.*, 646; McKee *v.* Maynard, 179 *id.*, 46; People *v.* O'Brien, 111 N. Y. Reports, 1.

[10] Lottery case, 188 U. S. Reports, 321.

[11] Luxton *v.* North River Bridge Co., 153 *id.*, 525.

[12] Pensacola Telegraph Co. *v.* Western Union Telegraph Co., 96, *id.* 1.

corporation in their own internal commerce, the courts will sustain it. It may indeed have already bound itself to some particular company in such a way that the permission cannot be revoked without paying the company its present value; but I do not know that any of the industrial corporations hold such a privilege, and Congress would not be obliged to continue unconditionally any merely tacit permission.[13]

The application of these principles is manifest. Congress in the first place can exclude from interstate commerce altogether that form of trust which is known as the holding company. In enacting a new Interstate Commerce Corporation Law, and excluding all companies which do not conform to the requirements of that law, it may require that no company shall participate, any one of whose members holds or controls, directly or indirectly, more than so much in par value, or so much in proportion, of its capital stock. In the next place it may destroy, in their present form, such agglomerations as the United States Steel Corporation, or the members of the so-called Anthracite Coal Trust. It may do so by declaring that no company engaged in interstate transportation can engage or be interested in any productive industry, either directly or indirectly, by lease, stock ownership, bond ownership or otherwise. If it be true that the result of permitting the same corporation to control the mine and the railroad—a permission which our ancestors would not have given—is that it is enabled to, and does, so juggle its accounts as to deceive both the wage earner and the consumer, there is here a plain remedy.

It may be said that some way would be found to evade any such law as either of those I have suggested. To a certain

[13] Conn. Mutual Life Ins. Co. *v.* Spratley, 172 *id.*, 602. Of course, as long as interstate commerce remains in the hands of state corporations they must obey the laws of their creator as well as those of Congress. Louisville & Nashville R. R. *v.* Kentucky, 161 *id.*, 677, 701. A passage in the opinion in this case (p. 702) has since been quoted by one of the judges as confirming a supposed theory that the instrumentalities of interstate commerce, as distinguished from interstate commerce itself, are under supreme control of the states (193 *id.* at p. 383); but the writer of the opinion thus quoted did not concur in the interpretation, nor did the theory receive assent from a majority of the court.

extent this is true. But there would be grave, practical difficulties in the way of an evasion on a large scale. If it had not been for the practical difficulties in the way of establishing a monopoly without an effective bond to hold a majority together, and hold a minority down, these combinations would never have advanced from the shape of the gentleman's agreement to that of the holding company. And in remembering the evasions of the past, we must remember also that in the past we have kindly provided new laws for the purpose of enabling promoters to evade the old ones.

Dealing with the more simple forms of the industrial corporation, whose only interstate commerce is the shipment of its own goods across state lines by the agency of common carriers, would be less easy. Still Congress can regulate it by imposing conditions up to just short of where the company would prefer to retire from interstate commerce altogether, each of its factories selling only to jobbers at its own doors. The device of a selling company attached to every industrial, controlled by it through stock ownership, and doing its interstate commerce business, would prove insufficient. A convenient method of regulation would be through the issuance of a license, as recommended by Commissioner Garfield since this paper was prepared.

Of conditions which Congress might impose upon such a license, the first which naturally comes to mind is publicity. Most of the earlier companies, at the time when judicial precedents were being established, were comparatively small concerns, like the contemporary partnerships with whom they were competing. To prevent their being too much at a disadvantage in the competition, a strong tendency developed to preserve the secrecy of their books even from the stockholders. The latter were regarded as sufficiently protected by their ability to put in a new board of directors once a year. Diversity of interest between the directors and the stockholders was not the rule, but the exception. The injury that the latter feared was from the outside, not the inside. But in the large industrials, with their multitudes of ignorant stockholders, and with boards whose directors may be partly dummies,

partly men whose interests are more identified with other and possibly rival enterprises, conditions are altogether different. Control of a company may be more attractive than ownership of its stock. Secrecy may enable the insiders to speculate in the stock upon the market, and play upon the ignorance, the hopes and the fears of those whom they are supposed to protect. I believe it to be true that the trusts would have been far from reaching their present power if by this precise method certain men, whose talents would not have overtopped their rivals if they had not been accompanied by "a certain fortunate balance between unscrupulousness and respectability," had not been able to reach a degree of power that sufficed for the performance of feats hitherto impossible in finance.

A generation ago, the remedy of publicity would have been decidedly effective in checking the overdevelopment of the trust. Whether or not it is now too late I do not venture to say; but the demand for publicity is now becoming general, and I see no reason why it should not be fully granted, under proper regulations, as to every corporation great enough to constitute a political issue. It is indeed true that, if all the stockholders of a great corporation know what is going on, everybody else will know it too. I do not see why we should be afraid of that result. If such a corporation cannot be successful under conditions of publicity, then let it dissolve into smaller bodies. Indeed, the small stockholders of so great a corporation can be protected, and the necessary examination can reasonably be made, only through a public agency. There must be money behind the examiner, and this the public can well afford to spend, while there is a limit to the number of hours during which the company can spare the use of its books. By publicity I do not mean the kind intended by the law establishing the Bureau of Corporations at Washington. It may be more dangerous to the public to have the secrets of great corporations shared between their directors and a dominant political organization, than to have them confined to the directors alone.

Another possible condition would be, by reviving a former custom, to restrict the amount of capital stock of any such com-

pany, either directly or by imposing a graduated license fee, intended to be prohibitory after a corporation should exceed a certain size. Graduated taxation is allowable to the states, except those whose own fundamental law prohibits it.[14] It is allowable also to Congress, except where it comes in conflict with the peculiar provisions of the Federal constitution as to a direct tax.[15] But the distinctions which have been drawn between the property and license taxes,[16] between direct and indirect taxation,[17] have left the whole matter in such obscurity that a graduated license fee intended to reach the surplus as well as the nominal capital, as by assessing the stock at its actual value, would doubtless be hotly contested upon constitutional grounds. If the surplus could not thus be reached, a graduated license tax would not accomplish its main purpose. It would merely readjust the relation between par and market value of the stock. Difficulties of this kind complicate the plan of taxing the present trusts out of existence like the old state bank notes.

Irrespective of its ability to impose its own conditions upon the privilege of engaging in interstate commerce, it is altogether probable, although not undisputed, that Congress can supplement any state anti-trust legislation by excluding from interstate commerce any article made in violation thereof.[18]

Time does not permit discussion of other possible restrictions, but requires me to turn away from the things which Congress can do negatively, in order to say a word about what it can do affirmatively. The latter is a subject which has been recently, perhaps, more discussed by others. The most popular panacea has of late been a National Incorporation Law.

[14] Kochersperger *v.* Drake, 167 Illinois Reports, 122; Magoun *v.* Illinois Bank, 170 U. S. Reports, 283.

[15] Knowlton *v.* Moore, 178 *id.*, 41.

[16] See for instance People *v.* Home Insurance Co., 92 N. Y. Reports, 328; 134 U. S. Reports, 594.

[17] See for instance the Income Tax cases, 157 *id.*, 429, and 158 *id.*, 601, and cases therein cited; also Knowlton *v.* Moore, *supra*, and cases therein cited.

[18] Analogously to the Federal game law of 1900.

Constitutional objections it is proposed to evade in two ways.[19] The first way is by forming corporations in the territories and in the District of Columbia, ostensibly under the power to make necessary rules and regulations respecting those portions of the country,[20] but really with intent that they should travel away, just as if they had been born in New Jersey, Delaware or West Virginia, and settle down upon the several states. It is admitted that they would have no better standing there, in point of law, than if they had really come from New Jersey, Delaware or West Virginia. But it is hoped that they would receive at least the same toleration. It is also hoped that they would be so much more honest and respectable, so much better regulated and inspected, than the present trusts, that in time they would supplant them. The second plan is that Congress, under its power to regulate interstate commerce, should permit the incorporation of jobbing companies with incidental power to grow, mine or manufacture the articles in which they deal, the assumption being that the whole domain of production can be brought under Congressional auspices as incidental to the business of jobbing, just as railroads incorporated by Congress for interstate commerce are allowed incidentally to carry freight and passengers from one point to another in the same state. The supporters of this plan admit that its advisability is subject to criticism, as its success would so much increase the already rapid rate of centralization at Washington, and so much further burden our already overburdened governmental system. I think that the criticism is serious, and I think that the constitutional difficulty is serious also. The spawning of corporations for export is not a necessary or even a natural incident to the regulation of the District of Columbia. The productive industries of the United States are not in a very natural sense incidental to the jobbing business. Sustaining this plan would put a good deal of responsibility upon the Supreme Court. I am not sure that the court would accept the responsibility.

[19] See the able paper on a National Incorporation Law by Prof. H. J. Wilgus, in the *Michigan Law Review* for February, 1904.

[20] Constitution, Art. IV, § 3.

I have not discussed the present Sherman Anti-Trust Law, because the construction of a particular statute is not very important except to the parties concerned and their attorneys. If this statute is not sufficient, a better one can be enacted. The main difficulties in its construction have been difficulties necessarily inherent in our Federal system. It is very hard to draw the line between that commerce which Congress may control and that commerce which it may not control, and to which therefore the Federal statute must be held not to apply.[21] The enforcement of the statute has been slow, and we do not yet know how far it would go toward the accomplishment of its purposes if its possibilities were fully developed by plaintiffs who are not restrained by any fear of running a-muck; but the somewhat prevalent notion that there has been culpable inefficiency on the part of the Attorney-General is entirely unfounded, at least as to the earlier half of its history. The lower Federal Courts were at first strongly opposed to it; the judicial decisions establishing its partial constitutionality and its main principles of construction were not and could not have been obtained for many years after its passage;[22] and Congress made no appropriation for its enforcement until February, 1903. The preliminary investigations necessary to its general enforcement against industrial combinations are expensive as well as difficult; and the fact that there have been so few private actions for damages under the act shows the

[21] Compare United States *v.* Addyston Pipe Co., 85 Federal Reporter, 271; affirmed 175 U. S. Reports, 211; and Montague & Co. *v.* Lowry, 193 *id.*, 38, with Hopkins *v.* United States, 171 *id.*, 578; Anderson *v.* United States, 171 *id.*, 604; and Whitwell *v.* Continental Tobacco Co., 125 Federal Reporter, 454.

[22] The decisive case (United States *v.* Trans-Missouri Freight Asso., 166 U. S. Reports, 290) was argued in 1896, and decided by the casting vote of Justice Peckham, who had taken his seat during that year as successor to Justice Jackson, a strong opponent of the liberal construction of the law. (See *In re* Greene, 52 Federal Reporter, 104.) Congress failed to provide means for its efficient enforcement, as twice requested by Attorney-General Harmon in that year. Evidence against an industrial combination was not obtainable until about that time, when a discharged stenographer revealed to a district attorney the secrets of the Addyston Pipe case.

difficulty of proving its breach, since private individuals as well as the Federal Government may take part in its enforcement.

The construction of this statute has tended, so far as it has gone, to follow the literal meaning of its words. The first serious question—apart from that of its applicability to railroad companies, which is not relevant to the present discussion—was whether the judges were intended to have a dispensing power by which they could permit the existence of contracts or combinations in restraint of trade, provided the restraint appeared to them to be no more than reasonable. In the first test case [23] a majority of the judges stood to the language of the law,[24] and held that there was no such dispensing power. One of that majority has since changed his mind,[25] and this has led many to believe that the decision will be reversed when the question is again presented to the court. As I read their language, however, the judges are committed, and by a majority stronger than before, to the original ruling.[26] It seems to me also that the ruling was wise. It indeed sounds well to say that restraints of trade should be permitted whenever they are reasonable. Everybody would agree to that, as a theoretical proposition. The concrete case presented, however, is not whether a particular scheme is reasonable, but whether A or B thinks that it is. If A thinks one way and B another, A being a Commissioner of Corporations and B an overworked judge, who has heard counsel on each side for an hour apiece, which shall rule? Or is it better to decide what kind of schemes are safe to allow as a general rule, and prohibit all others, leaving to nobody a jurisdiction to permit

[23] Trans-Missouri case, *supra.*

[24] There is a somewhat prevalent notion that the words "restraint of trade" meant "unreasonable restraint of trade" at common law, but an examination of all the authorities by the writer as counsel in the Addyston case showed that the notion is erroneous. "Restraint of trade" might be reasonable and lawful or unreasonable and unlawful.

[25] Northern Securities Company *v.* United States, 193 U. S. Reports, at pp. 360-361.

[26] Four justices in the case last cited restated the rule at p. 391. Of the remaining four, one had actually written the opinion in which it was first laid down, another had concurred in that opinion. All four concurred in reaffirming the previous decision. (Compare pp. 386, 405.)

exceptions where he thinks they would be reasonable? The reasonableness of a gigantic industrial combination, like the reasonableness of a railroad rate, is a very difficult and complicated question of fact. The arguments pro and con, as upon the analogous question whether a new legislative restriction upon the rights of property or of contract is sufficiently reasonable to be considered due process of law within the meaning of the Bill of Rights, are not peculiarly adapted to judicial consideration, but are rather economic and political in character. In difficult cases their solution requires an amount of expert knowledge which judges ordinarily cannot be expected to have before the argument,—for while they are wise, they are not omniscient,—and which the over-burdened federal calendars do not permit them to acquire between the argument and the decision. If the present provision concerning restraints of trade be amended in the future, I think it will be wise to confine the amendment to a greater certainty of definition and otherwise leave it as it has been left by the court.

If anywhere, I think that such a dispensing power should be placed in some quasi-judicial body of experts, carefully selected and not discredited or disheartened by knowing that their rulings are to be reviewed by other men of no greater natural ability, of less special qualifications, and who can pay less attention to the case in hand. The Interstate Commerce Commission is often cited as an example of the failure of such a body to do good work. It is supposed to have failed because it has been so often reversed by the courts. But the Interstate Commerce Law, as the courts have construed it, allows new evidence to be introduced before them after the Commission has made its decision, while the court decides on the record before it without the special knowledge otherwise derived, which the Commission is expected to use. Thus the court has more material before it of one kind, and less of another. If review is allowed at all, the record should remain the same. The argument also involves a *petitio principii* in assuming that the court's decision is the right one. When the facts as usual are complicated and difficult, the Supreme Court acts on the assumption that not only the lower court

judges, but also the railroad officials themselves, are better qualified to decide than are the Commissioners appointed by Congress for that purpose. When the Commission decides against the railroads and the judges below decide in their favor, the Supreme Court will not sustain the Commission unless "convinced that the courts below erred." In other words when the lower judges agree with the railroads the decision of the Commission must be established beyond reasonable doubt in order to stand, no matter how careful the opinion of the Commission or defective the opinions of the judges, or how inconsiderable are the standing of the judges in the estimate of the bar.[27]

The present prevailing notion that all acts of quasi-judicial and even executive officers should be reviewed by the courts could be shown by many instances, I think, to be based on slight foundation.

The other serious question presented under the Sherman law—namely, whether its prohibition of combinations in restraint of trade "in the form of trust or otherwise" covered a combination in corporate form, chartered by one of the States of the Union—has been affirmatively decided by a majority vote of the Supreme Court, affirming a unanimous decision of four judges below.[28]

When I began, I said that I would say nothing about the economic and political aspects of governmental interference. Now I want to repent, and say a word on those also. The people who advocate such interference are accused by the orthodox of overlooking recent economic changes which are supposed to cut off forever the hope of a return to former competitive conditions. Perhaps there would be force in the reply that we may be now in a transition period, which in its own turn will come to an end within our generation or the next. It is not impossible, perhaps not improbable, that the Age of

[27] See for instance Interstate Commerce Commission *v.* Alabama Midland Railway Co., 6 Interstate Commerce Comm. Reports, 1; 69 Federal Reporter, 227; 74 *id.*, 715; 168 U. S. Reports, 144.

[28] Northern Securities case, 120 Federal Reporter, 720; 193 U. S. Reports, 197.

Invention will come to an end, because the things that are capable of invention by the human mind in its present stage of evolution will have been mostly invented; and I refer not only to inventions in the Arts and Sciences, but also to discoveries as to organization and methods of corporate and other business. When the discoveries have been made, it becomes comparatively easy to conduct a similar business on the new lines, and many people can be found who are capable of so doing. Many men can carry on a great executive department once established, and make minor improvements in the work, where only one could originally have organized it and set it going. And so, to concede that an executive department could not have developed a great industry in the first place does not necessarily involve a concession that it could not carry on that industry, upon lines developed by private enterprise, with no more than a negligible percentage of waste. By the middle of the twentieth century the world may have reached a condition comparatively static. If competitive conditions are then impossible, and state socialism seems the only alternative to a financial oligarchy, state socialism may appear to our children less impracticable and more tolerable than it does to us. From such an alternative in the future the advocates of governmental interference, without government ownership, are seeking an escape. Whether an escape by this road is possible or impossible can not be learned from the one sure teacher—experience—until further legislation has been tried.

THE REGULATION OF RAILWAY RATES.

HON. MARTIN A. KNAPP.

The purpose of this paper is merely to outline without elaboration the questions involved and the principles to be applied in the regulation of railway rates by public authority. If any argument is needed in support of the right and the duty of government control, it is found in an obvious and fundamental fact. Until modern discovery utilized steam as a motive power, the ordinary public road was the sole means of communication by land, the only pathway of internal com-

merce. Before this new agency was brought into service, while the old highways were yet exclusively employed, the right to their common use was nowhere doubted or denied. In recent times certainly—and this is the point of importance—the established roads, the strips of land set apart as ways of passage, have everywhere been regarded as common property, and the right to their common use has been the recognized and equal possession of every person.

But the transfer of land commerce to highways of steel, with the substitution of steam and electricity in the place of animal power, has not impaired the nature of this right or diminished in the least its inestimable value. On the contrary, there is no pursuit or employment which is not now more dependent than ever before upon the means provided for public transportation. The railroad has become the principal highway. For long-distance movement it has wholly supplanted the public road, yet it performs on a much greater scale the same governmental function and meets the same increasing and indispensable need. Hence, the railway of to-day, this wonderful vehicle of modern commerce, has become the chief factor of industrial life, the *sine qua non* of its power and progress, the primary condition on which individual opportunity and welfare continually depend. The right to just and equal charges for railway service springs therefore from the nature and necessities of social order. The railroads are an agency of the state for discharging a public duty of the highest utility. The right to use their facilities, like the right to the common highway, is an inherent and inalienable right the very essence of which is equality.

To secure the full enjoyment of this right, to enforce reasonableness and impartiality in the conduct and charges of railway carriers, is the distinct and beneficent aim of all regulating measures. The ideal condition obtains when the facilities of transfer are furnished on fair and actually equal terms, so that no advantage to one person over another, or to one community or commodity over another, is gained or expected in the use or cost of the agencies of transportation.

Now, whatever plan is adopted for accomplishing this pur-

pose, it is evidently needful, as a practical measure, to provide at the outset a legal standard of compensation binding alike on those who furnish and those who employ the instrumentalities of public carriage. In other words, there must be a fixed and common rate, made known by suitable publication, which constitutes while it remains in force the measure of lawful charges. In the nature of the case, as it seems to me, this is necessarily the first step in the regulation of rates and charges.

Starting then with the standard legally established, whether by the carriers themselves as is now the case or by the exercise of public authority in the first instance, two difficulties at once arise. These difficulties are quite distinct in nature and differ widely as to the appropriate means by which they may be overcome. One relates to the measures for securing conformity to the standard rate, the other to the methods by which the standard itself may be changed or its reasonableness tested. These are practically unlike purposes. To accomplish them both requires efficient but dissimilar action. It is one thing to prevent the wrong-doing effected by granting to favored persons some discount from established charges, no matter in what way the preference may be secured; it is quite another thing to correct the wrong-doing which results from excessive or relatively unfair rates, though properly published and strictly enforced. This important distinction—between offenses like secret rebates and kindred practices on the one hand and injustice resulting from the operation of the published rate itself on the other—is frequently overlooked. For this reason doubtless there is much misconception both as to the provisions of existing laws and as to the power of Congress to legislate upon the subject.

The nature of the distinction here pointed out and the importance of its recognition are made apparent when once the practical aspects of the matter are clearly perceived. It must be evident upon reflection that the only effective mode of dealing with those discriminations between individuals which are effected by rate-cutting, rebates, underbilling and the like, *is to place them in the category of criminal misdemeanors.*

No other direct and suitable remedy can be provided by legislative enactment. Any redress for injuries of this sort through civil actions for damages, which is the only alternative, is manifestly of insignificant value. It neither affords compensation to those who have suffered nor does it operate with any force to prevent the recurrence of such misconduct. For offenses of this class are not the mere disregard of contract obligations; they are infringements of the common right and violations of unquestioned public duty. But when transgressions of this kind are made amenable to the criminal law, when the statute has impressed them with this penal character, they must be dealt with in the same manner and by the same agencies as other punishable offenses. As respects their prevention or the methods by which those who commit them may be prosecuted, they differ in no material respect from other misdemeanors. The ordinary machinery of the criminal law must be employed against those who transgress in this manner, and there is no other way by which penal provisions can be made effective.

It is scarcely necessary to observe that an administrative body, like the present Commission, is wholly without authority to prevent this species of discrimination. True, such a tribunal may be charged with the general duty of executing and enforcing the law; but it cannot be endowed with the power to punish delinquents or to otherwise administer the criminal remedies provided, except as it may aid prosecuting officers in procuring evidence against suspected parties. Plainly, if immunity is secured from these vicious practices it must be sought in the means devised for the enforcement of other criminal laws, and by the adoption of a legislative policy which will remove or minimize the inducement to criminal wrong-doing.

It is worthy of remark in this connection that these are preventable evils. They are the natural outgrowth of conditions and theories which have largely obtained in railway operations, but they are rapidly disappearing and will soon, I am sure, become as rare and as relatively unimportant as highway robbery and other like offenses. Their existence, to

the extent they may continue, will not be a serious element of the railroad problem, as their suppression is only an incidental feature of the task of regulation.

If these views are correct, it becomes apparent that the principal and permanent office of regulation concerns itself not with secret or prohibited departures from the public standard, however established, but with the reasonableness and justice of the standard itself and the means of bringing about its alteration whenever found excessive or inequitable. When the effort at government control was first undertaken, there were as now tariffs in general use which furnished, nominally at least, the basis for computing the carrier's charges. These rates are fixed by the railroads themselves and represent their notions of proper or obtainable remuneration. The great body of producers and consumers, whose interests are so vitally affected by the cost of transportation, and who are so completely dependent upon this public service, have no voice in determining these charges and little power to prevent exactions or inequality except as they may command the intervention of public authority. If the tariffs in current use are filed and published as the law now requires, and as any useful and workable law must necessarily require, they furnish a standard of charges *prima facie* lawful and binding both on the railroads and the public. So long as they are actually observed nobody presumably is injured and nobody at fault. But if those upon whom these rates are enforced complain that a given rate is too high or is relatively unjust, and that charge is denied by the carrier concerned, how is the controversy to be decided? Are railway managers themselves to be the sole judges of the reasonableness of their own rates? Are they to be the final arbiters of the just relation of rates between different commodities and different communities? To investigate these tariffs, made as they are for the most part by the railroads themselves and in their own interest, to compel their correction when found to be oppressive or unfair, to determine in such cases what are just and reasonable rates for public carriage, is a governmental function of the highest utility. This is the central idea of regulation and the per-

manent field of its usefulness. Some authority there should be, superior to and independent of the carrying corporations, to examine their schedules, prevent unjust exactions, and equalize so far as may be the burdens of transportation. More and more, as population increases and industries multiply, will these burdens demand unbiased scrutiny and equitable readjustment. To give each community the rightful advantages of location, to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, to make the avenues of distribution and exchange equally available to all producers, so that none shall be overweighted by discriminating rates or oppressive charges, to settle such controversies as may arise between the carriers and the public with due regard to the interests of both; all this, as it seems to me, is comprehended in the needs and aims of public regulation.

That legislation to this end is a valid and appropriate exercise of the constitutional power possessed by Congress has repeatedly been declared by the highest judicial authority.

In the notable case of Ames v. Union Pacific Railway Company (64 Fed. Rep., 178) Mr. Justice Brewer uses the following language:

"Within the term 'regulation' are embraced two ideas: One is the mere control of the operation of the roads, prescribing the rules for the management thereof—matters which affect the convenience of the public in their use. Regulation, in this sense, may be considered as purely public in its character, and in no manner trespassing upon the rights of the owners of railroads. But within the scope of the word 'regulation' as commonly used, is embraced the idea of fixing the compensation which the owners of railroad property shall receive for the use thereof."

Under this decision and others of equal significance, it may be regarded as definitely settled that, within limitations which preserve to the owners of railroad property the equal protection of the laws and prevent the taking of such property without due process of law, the power of Congress—either by direct action or through the medium of a commission—to prescribe from time to time the scale of charges for the carriage of interstate commerce is in every respect plenary

and exclusive. The wise exercise of that power within those limitations, for the purpose of enforcing transportation rates which are reasonable and relatively just, is at once the most important and the most needful in the whole field of national legislation.

Obviously, the investigation of published rates which are the subject of complaint and the alteration of the established standard, when that standard is found to be actually or relatively unjust, are matters unsuited to the application of penal statutes. The carrier which fixes in good faith and impartially applies a schedule of rates cannot be regarded as a criminal offender merely because that schedule is *believed or afterwards found to be excessive* in amount or prejudicial to one locality as compared with another. These are questions concerning which there may be and often is an honest difference of opinion, and until a new standard is in some way authoritatively fixed the collection of charges according to the old standard affords no ground upon which to base a criminal charge. The demands of justice in such cases would not be satisfied if criminal liability could be predicated upon the observance of a standard rate, although claimed to be unjust, before a new standard was in some way prescribed. In other words, there must be a proceeding in the nature of a judicial inquiry or the alteration of the open tariff by voluntary action or the exercise of public authority.

Nor can the correction of excessive or preferential rates be secured through the ordinary courts. Not only are their methods and rules—however necessary to safeguard the adjudication of private controversies—unsuited to the determination of public rights as affected by transportation charges, but the limitations upon their powers preclude them from granting the measure of relief which the nature of the case requires, and that is the substitution for future observance of a new standard of charges. If the rates in force are too high or relatively unjust, the only remedy of practical value is a reduced or readjusted schedule to be thereafter applied. But this involves the exercise of legislative authority which courts do not possess and with which, under our form of govern-

ment, they apparently cannot be endowed. Any substantial and adequate relief from inequitable rates must therefore be afforded through the medium of an administrative tribunal.

Such a tribunal, exercising by delegation some measure of the power vested in Congress, should have ample authority to determine in the first instance, and with at least the conclusiveness of a court of first instance, whether particular rates or practices, of which complaint is made and which are investigated upon notice and opportunity to be heard, are or are not in violation of the carrier's obligation to charge only reasonable and non-preferential rates. When such a question has been thus tried before that tribunal, its decision should stand as a rule of conduct prescribed by public authority and be observed as the just and legal standard of charges, unless a review thereof by the courts shall disclose some error which warrants judicial interference. It is not proposed that this tribunal shall establish schedules by arbitrary methods or be clothed with power to fix rates by *ex parte* orders; but it is proposed, when a given rate is complained of on the ground that it is excessive or relatively unjust, and that complaint has been examined upon due notice to the carrier and full opportunity to be heard, that the judgment of the tribunal in such case shall be binding upon all parties to the contention, unless judicial review finds cause for preventing its enforcement. The exercise of such authority when occasion requires is the only appropriate and adequate safeguard against unreasonable or discriminating charges. Not in the award of damages for past injuries but in the substitution of a new and juster standard of compensation will be found the sufficient and comprehensive remedy for the wrong-doing occasioned by unreasonable rates; and nothing short of this answers the purposes or meets the needs of public regulation. Congress has not undertaken, probably will not undertake, to prescribe by specific enactment what rates shall be charged by any road or on any article of traffic. As a practical matter, its power in this regard must be delegated to an official body which shall determine and prescribe the rates and rate relations to be put in place of those found to be unreasonably high or to operate

with discriminating effect. To guard against the abuse of such authority the action of the regulating body should be subject to judicial control under conditions suited to the nature of the controversy and designed to secure its just and speedy determination. In my judgment these are the principles which should govern the development of any suitable and sufficient scheme of railway regulation. If these principles are accepted their application becomes a matter of detail which the limits of this paper do not justify me in attempting to discuss.

One inference from these views, however, may be properly suggested. The evils which have attended the growth and operation of our railway systems, and which have given rise to so much public indignation, have their origin and inducement for the most part in the competition of carriers which our legislative policy seeks to enforce. That this is a mistaken and mischievous policy I am fully persuaded. So long as the competition between carriers remains unrestrained, just so long will it find expression, to an extent always serious and often alarming, in secret departures from the established standard and relative injustice in the standard itself. The power to compete is the power to discriminate, and it is simply out of the question to have at once the presence of competition and the absence of discrimination. To my mind the legislation which decrees that all rates shall be just and reasonable, and declares unlawful every discrimination between individuals or localities, is plainly inconsistent with competitive charges. The facts of experience and familiar knowledge demonstrate the error and futility of regulating laws which at once endeavor to make rate competition compulsory and at the same time condemn as criminal misdemeanors the acts and inducements by which in other spheres of activity competition is mainly effected. For this reason I advocate the legal sanction of associated action by rival carriers in the performance of their public functions. This is the one sensible and practicable plan, adapted to existing conditions and suited to the requirements of a public service. Such a policy would promote and invite the conduct of railway transportation in the manner most beneficial to the people and the railroads alike.

The true theory of public regulation, therefore, the theory which is best calculated to produce useful results, is to allow the railways to unite with each other in the discharge of their public duties, thereby making it feasible and for their interest to conform in all cases to their published schedules, and to invest the regulating body with authority, after investigation of complaints upon due notice and hearing, to condemn the rates found to be actually or relatively unreasonable and to prescribe, subject to judicial review, a substituted standard to be thereafter observed. If these views are correct and grounded in sound public policy, their speedy adoption will enlarge the benefits and promote the success of railway regulation.

DISCUSSION.

EDWARD P. RIPLEY: For nearly forty years I have had to do with the making of freight rates and the general relation of the public and the railroad. In this, as in all other details of trade and of transportation, there has been a constant process of evolution, which has been but little affected by attempts at legislative restriction or regulation.

Prior to 1880 the railroad was generally regarded as a private institution, operated by its owners purely for private gain, with but very ill-defined duties toward the public. Rates had been originally fixed just low enough to take the business as against wagon transportation, but had declined rapidly from that point by reason of competition between carriers, and because it had been discovered that, within certain limits, business could be stimulated and increased by reductions in rates. But there was natural hesitation about a wholesale reduction of tariffs, and it was found safer and easier to allow the nominal tariff to stand, and to make special rates as needed by refunding a portion of the charges upon certain shipments—and this was the origin of the so-called "rebate system."

Much as this system has been denounced, and many as were the abuses to which it lent itself, there were some things in its favor. A manufacturing establishment, for instance, located upon the line of one of our Western roads properly

demanded a lower scale of rates than those published in the tariff—yet such a scale could not be afforded at the price of a general reduction; and there is no good commercial reason why such an institution, employing say 500 to 1,000 men and creating a centre of population, should pay upon its thousands of tons of coal, for instance, the same rate as the village blacksmith pays for his twenty or thirty tons.

The "wholesale and retail" idea was generally claimed by shippers and admitted by the railroads—*i. e.*, the equity and propriety of a lower rate to the larger shipper. It was not long, however, before railroad men began to see the fallacy of this notion, and to realize that so long as the large shipper obtained the lower rate there would be no small shipper; and so, gradually, the general rule obtained that all those competing for the same business in the same territory were given substantially the same net rate. It would be too much to say that there were no exceptions to this, or that there were not some flagrant cases of discrimination, but they were the exception and not the rule, and while a larger portion of the rates charged were not the rates of the printed schedule, there was but little real injustice done.

But the few cases of wholly unjustifiable discrimination which came to light, and the agitation of a few people, some with real and some with fancied grievances, resulted in the passage of the Interstate Commerce Law, which became effective in 1887. The crudities and absurdities of this law have been often pointed out, and I shall here allude to them but briefly.

Its great defect is in that it contradicts itself in attempting to enforce absolutely stable rates, alike to all, and at the same time fostering unrestrained and unregulated competition —two propositions entirely at variance with each other and impossible to reconcile—and to this fatal defect may be laid the entire failure of the law to accomplish the object sought. For the large shipper still clung to the idea that as he could buy everything else on a lower basis than his small competitor so also should he buy transportation on a lower basis, and he had no respect for any law that sought to hinder him;

and while railroad officers had long discarded this idea as a principle and had fully realized that the wholesale and retail idea as applied to transportation was applicable only to the distance hauled and not to the quantity, yet the tonnage of the big shipper was a powerful argument, and in due course of time prevailed. Moreover, the tendency of the times was, and still is, toward concentration of the leading lines of business into few hands, thus putting the control of an enormous tonnage into the hands of a few men, who were quite willing to violate the law—primarily, of course, for gain, but also because of utter disbelief in its equity or propriety.

(Let me here interrupt myself to say something which may be of interest because so foreign to the general idea.)

.The Standard Oil Company, upon the passage of the Interstate Commerce Law announced its intention to neither solicit nor accept any form of rebate or concession, and from that day to this has paid the full published rates, dividing its business between the carriers, in marked contrast to the other so-called trusts. I hold no brief for the Standard Oil Company; it is said to have had its origin in illegitimate advantages in rates; but it is only fair to make this statement—a statement that will be confirmed by every railroad in the country.

Since the passage of the Interstate Commerce Law and the almost co-incident consolidation and concentration of tonnage the rate discriminations have decreased largely in number; that is to say, the beneficiaries are fewer, but the real discrimination has been worse. Under the old system rebates of ten per cent. might be paid to hundreds of shippers, and they were practically all on the same basis; under the new state of things rebates of thirty, forty, or even fifty per cent. were allowed to the "Trust," with the result that there were soon no other shippers.

Let me hasten to say that I am not making a confession. I do not mean that the law was technically violated in all these cases; all sorts of devices served as evasions of the printed requirements of the law—given a desire on the part of a large shipper to get concessions, and a desire on the part of the

railroad to grant them—and it can be done in a thousand ways which it would be difficult, if not impossible, to detect. Of course, the railroads do not want to disobey the law; neither do they want to pay back to the shipper any part of their earnings. If they do it it is because they fear loss of tonnage in case of refusal—and men are but mortal. I am not excusing this, but there are roads which are, under existing conditions, forced to disobey the law or be forced to the wall.

The obvious solution of the difficulty is to cease trying to make men honest by statute and to remove the restrictions which now prevent the railroads from presenting a solid and united front. We are now expressly forbidden to combine, while all the world may combine against us, and so our strength is measured by that of the weakest among us.

The Interstate Commerce Commission has for years been urging that it had not the necessary power to enforce the provisions of the law; that its decisions were either ignored, nullified or appealed from, resulting in little or no relief to complaining parties; that, being by law empowered to hear and pass upon complaints of unreasonable rates, it should be empowered not only to say what is unreasonable, but also to say what is reasonable and to have its decisions respected. On the other hand, it is contended that the law never intended to confer the rate-making power on the Commission, and that its findings can only be properly enforced by proceedings in the regular courts.

And now comes the President of the United States as more or less an ally of the Commission's view.

This recommendation is the result of a constant pressure for more power on the part of the Commission itself, and of agitation on the part of a few individuals who have been able to create an apparent public sentiment. I say "apparent" because it is easy to manufacture what seems to be on the outside a popular demand, by persistent effort and *ex parte* statements. As usual, the railroads have made little effort to defend themselves; but the ceaseless clamor of the Commission and the real or unreal clamor of the public has

reached both the legislative and executive branches of our government and it is now seriously proposed that something be done.

In the effort to divest myself of all class prejudice and to look impartially at the whole question I am constrained to admit the claim that there should be a body whose decisions should be final upon rate questions, and that it is desirable that this body should be specially constituted to deal with such questions. I do not think that this power should be given the present Commission, because it is a prosecuting rather than a judicial body. But if the nation is to assume the power to adjust railway rates, I most urgently insist that it at the same time remove the restrictions which now prevent us from maintaining the rates as fixed. The proposition that the government shall even remotely or partially assume control of railway rates is a long step toward paternalism and in direct contravention of the theory that the country least governed is best governed. Yet I can conceive of conditions under which the settlement of certain questions by an agency distinct from, and superior to, the railroads might have its compensations and be even beneficial. It is a well-known fact that the great majority of cases heard by the Commission are not complaints that rates are too high *per se*, but that they are inequitable as compared with other rates. Each community is jealous of its trade and constantly striving for advantage over its rival, and the adjustment of rates is, with the best of intentions on both sides, a difficult and delicate matter, and there have been cases, and may be again, where the decision of a disinterested and impartial tribunal would be a positive relief. But if the government is to assume regulating functions; if it is actively to supervise rates and transportation; if, in short, the railroad is taken out of the list of purely commercial enterprises and invested in whole or in part with a public character, then it seems to me that it must be so clear as to need no argument that it must be treated more or less as a ward of the government in other ways, and must be protected as well as regulated.

The Sherman Anti-Trust Law and the prohibition of pool-

ing in the Interstate Commerce Law have but one object, one excuse for being on the statute books, namely, to prevent extortion; and if the government assumes to prevent extortion by direct control of rates it certainly cannot concern the public what agreements we make with each other, or what we do with our earnings. Our crying need is for a means by which we may *maintain* the rates. In some cases a simple agreement suffices; in other cases a pool is necessary to an agreement. Both are now prohibited.

I do not wish to be understood as in the least in favor of making the decision of the Interstate Commerce Commission final. I do not think the prosecutor should also be the judge; nor do I think the findings of the Commission should be observed pending appeal, for the reason that if the appeal is sustained the railroad has no redress for its losses; but there might be a small and strictly judicial tribunal of high class, and divorced from politics, to pass upon appeal from the findings of the Commission. The main point, however, is that the government, if it will regulate, must protect; if it limits rates it must, in justice, remove all impediments to the collection of the rates as fixed. Herein only lies consistency and logic.

It will be observed that the conclusions I have reached differ from those of Mr. Knapp in but one essential particular, namely, that he desires the findings of the Commission to be put into immediate effect, while it seems to me that there is no valid reason for this departure from the usual course in cases of appeal. For if the rates fixed by the Commission be not sustained on appeal, there is no redress for the railroad; it cannot collect from the shippers the sums which it has undercharged them; while it is quite feasible for the shipper to collect overcharges in case the rate fixed by the Commission be sustained on review.

The chairman of the Interstate Commerce Commission is a man of broad views and of judicial temperament. I do not think that any of the railroad representatives would raise great objection to his position, except in the one particular I have mentioned.

JOHN H. GRAY: To gather up the different parts of the arguments and show the relation of one to the other in two or three minutes is impossible. I take it there are certain things that are settled, as Mr. Ripley has just indicated, namely, that a railroad is no longer a private institution, but one in which the public has a great, even a paramount interest. It exists to-day as one of the fundamental necessities of civilization. That being the case, it seems to me perfectly plain that the public interest must be maintained, and will in the long run be maintained, and must be maintained in one of two ways, either by an effective public control with private ownership, or by public ownership; and if the control under private ownership cannot be made effective, then we not only will, but, in my opinion, we ought to pass to public ownership. That being the case, I think it follows inevitably that it is unsafe, in human affairs, and especially in a nation commercialized as much as this is, to leave a matter of conflicting interests to be decided by one of the parties. In other words, the government has got to have a hand in making and testing the rates. I don't know of any department in human life in which there are conflicting interests in which it is safe to leave the decision to one of the parties alone. I think Chairman Knapp has done a service in the distinction he has made in regard to the two kinds of evils, or supposed evils, to which the public is exposed. One he designates as criminal acts and the other as administrative acts, subject to administrative adjustment. In regard to the rebates and under-billing, and all the other devices to accomplish the same purpose, I think there is no difference of opinion among the more progressive railroad men or among the scientific students. You can find all sorts of opinions among 76,000,000 people, it is true, but speaking of scientific opinions and of the opinion of progressive and prominent railroad men, I think there is no difference of opinion. There is a great evil, there is an evil that we are all—I mean all the people I have just referred to—convinced cannot be remedied without doing the thing Mr. Ripley has so emphasized, and Mr. Knapp emphasized just at the end of his paper. It is absolutely impossible,

and we all here know it, to stop the rebates and the discrimination of that sort, without authorizing pooling. I think in the last few years we have made some progress in regard to that. I think that, not realizing how strong, or weak rather, the government might be in its attempt to control, we were rather afraid to authorize pooling, but I believe we have made such progress in the last few years that it is not going to be a difficult thing to accomplish, at least for much longer. It is absolutely essential; we all know it. It is not worth while to dwell on it. We must authorize pooling or we cannot stop the other thing. I am going to digress to refer to what Mr. Knapp has used the hard word of "criminality" towards. If we have learned anything in dealing with criminal acts, we have learned that progress is not made by punishing people for such acts, but rather by changing the circumstances so as to reduce the temptation to commit the acts; and the pooling clause is the thing to remove the temptation. Coming now to the other part, namely, the adjustment of the rates in the public interest, if the public ought to have a finger in that, we are right in saying that great progress has been made. Within the last few years, and even within the last few months, we have made what seems to me great progress by at least a less frequent use of the terms "make rates" and "fix rates" in an ambiguous sense. A large part of the discussion—and it has come from various classes of society, and has not been entirely unknown to the railroad world itself—has referred to the fixing of rates in speaking of the Interstate Commerce Commission, as if that Commission were supposed to sit down in its own chambers and out of its own brain evolve a system of railroad rates for all the traffic in the country. Of course that is past. When we talk about giving the Commission power to fix or make rates, we mean—all of us here mean—fixing rates in specific instances after a public hearing and after thorough investigation, and I come now to the point that Mr. Ripley emphasized last, namely, to the fact that, we cannot change the Constitution of the United States, according to which rates, when fixed, are all subject to judicial review. Ought the revised rate, made not *ex parte,* but after thor-

ough investigation by the Commission, the best body that we have yet invented to represent the public interest, which we say must be represented, to be enforcible, or ought it to go into effect before the judicial review? Now we are not going to make very much progress unless we have a distinctly administrative body. I was very much interested in Mr. Ripley's language referring to the prosecuting character of the Commission. There is some justification for that, and I think the justification of that remark is going to become less and less as the time goes on. That Commission ought not to be a prosecuting Commission; it ought to be an administrative Commission, and I believe we are coming to the time when it will be; but I find myself unable to agree with Mr. Ripley in regard to the time at which the findings of the Interstate Commerce Commission should go into effect, respecting judicial revision. It seems to me the proposition he has made in the present state of the popular and the Congressional mind would lead, in some measure, not to the same extent, but to a detrimental extent, to exactly the evils we suffer when we try to settle these things by the ordinary courts—a thing which cannot be done.

WILLIAM Z. RIPLEY: *Mr. President and Gentlemen:* If all the railway men of the country were willing to stand on the ground which has been taken by the President of the Atchison, Topeka & Santa Fe Railroad there would be less prospect of a struggle ahead in Congress in the course of the next year. It seems to me the point that he has stated is an entirely fair one, that it is impossible to expect competition to continue as the underlying principle of railroad rate-making and, at the same time, to expect that the policy of the Interstate Commerce Law of 1887 should be carried out as it is propounded in that law. It seems to me—I have always felt it very strongly—that a large number of railroad abuses, those consisting of inequality in charges, could be readily corrected by the railroads themselves if pooling were not only permitted but were made enforcible in the courts. It was a matter of long and heated discussion before the United States Indus-

trial Commission as to whether a recommendation in favor of pooling in this way should be allowed to creep into its final report, and a good many of us who were working for that Commission regretted exceedingly that it did not contain and recognize the possibility of remedial action by the railroads for correcting many of these abuses. Concerted action should be not only permitted but made a legally enforcible matter. On the other hand, if you are going to grant such power—and I think it is highly doubtful in the present state of public opinion if it will be granted; but supposing some concerted policy as to rates could be allowed—it seems also surely true that the public's interest in such concerted policy must be safeguarded by some means of revision. Whether that revision shall be made by an administrative commission, as at present proposed, or whether it shall be by a court, is a matter of detail. Experience with courts in foreign countries, so far as I know, shows precisely the same evils which we have—those of intolerable delay, those of great expense to the persons who seek redress, and of other evils of which we have not time to speak. At all events, if we could possibly grant the right of concerted action, and add to it a supervision, with power of revision by the courts ultimately, if you please, but permitting the first decision of the administrative board to hold until the matter is finally settled in the courts; it seems to me the interest of the two parties in this great controversy could be settled for good.

HARRY T. NEWCOMB: The questions I wish to suggest are, first, whether the evils, which undoubtedly exist to some extent, are great enough to justify this radical departure from approved legislative practice; and, second, whether the remedy suggested is adapted to the evils that exist. It may serve to make the discussion clearer if I say at the outset there is no proposition before the Congress, and scarcely any before the people, which is aimed at the eradication of the rebate system, although it is true a paragraph in the President's message does recommend the enactment of legislation to prevent railway rebates. The suggestion made by Mr. Ripley

that pooling be legalized, is applied to the eradication of rebates; but I don't know that there is any substantial sentiment in Congress in favor of the enactment of a pooling law. As to the magnitude of the evils alleged to exist, Mr. Ripley very well said that this sentiment has been manufactured. There has been a very active propaganda at work in the effort to make people believe that terrible evils exist in connection with railway rates. I am not speaking with regard to rebates. I will go as far as any one in endorsing any legislation fairly aimed at the removal of rate-cutting and under-billing and all secret devices by which one person is favored over another person. Now, in the adjustment of the schedules, we have had the Interstate Commerce Commission at work for seventeen years, and it has decided 353 cases, and out of the 353 cases which it has decided, it has decided precisely 194 in such a way that if everything was done which it recommended should be done, some relief would have been gained to the complainant; that is just a trifle more than ten cases a year for seventeen years. Now, when we refer to those facts, the suggestion is always made that if the Commission had more power, it would have more cases to decide; but for ten years, as the Commission says in the reports which were submitted to Congress two weeks ago, it did exercise, or claim to exercise, and held out to the people of the country that it had the right to exercise precisely the power which it is asking for now; and in that ten years it did not, on the average, decide as many cases as last year, and did not have as many complaints by about 50 per cent. as last year. The average of complaints during the first ten years was about 40. The number of complaints for last year was 63. Now, as I said, 194 cases have been decided in favor of the complainants. Some of these cases have gone to the courts. The Commission made a report to Congress not many years ago in which it gave the result of the orders which it had made commanding railways to change rates. That report covered 107 cases, and the Commission reported to Congress that in 58 of these cases the railways had fully and completely complied with its order. In 11 more it said there had been par-

tial compliance, and in another it said some changes had been made. It is to be observed in regard to those 12 cases that the compliance had was at least sufficient so that neither the complainants nor the Commission went into the courts for the enforcement of its orders. Therefore, we may say in 70 out of 107 cases compliance with the orders of the Commission was substantially complete, and the relief asked for was obtained through the Commission without its having the power to order a rate or the power to issue a final decree which would be in force pending an appeal. Forty-three cases during the history of the Commission have gone to court; in two cases the order of the Commission has been sustained. There are a few cases pending, six or seven. Is this remedy adapted to the evils that are claimed to exist, if they do exist? Look at the states where rate-making is maintained. Has any fair inquiry been made to compare the conditions in those states as to state rates and state shipments, with the conditions in other states where they don't have rate-making commissions? Ask some of the shippers in the state of Illinois whether the rates in this state are lower or higher than the rates in Michigan and Ohio and Indiana. Ask the citizens of Georgia, where they have had a rate-making commission for many years, whether their state rates are lower or higher than in other states. Only the other day the Atlanta *Journal* reported editorially that it was impossible to get reasonable rates within the state of Georgia, although interstate rates were reasonable and were not more than half as high, and it gave as its reason that if the shipper went to the railway asking for a low rate in the state of Georgia, he was told the railroad had nothing to do with that, it was in the hands of the railroad commission; but if he asked for the interstate rate he got it, because the railway had the power to give it.

F. B. THURBER: What I have to say is largely from the standpoint of a shipper. I have been a shipper by railroad for many years and now represent other shippers. It seems to me that this whole discussion, as presented to us here to-day, is coming down pretty close to two points, and that is whether we should have an amendment of the Inter-

state Commerce Law which will give the Commission the right to prescribe rates, and have those rates go into operation before they are reviewed by the courts; and also as to whether we shall authorize agreements between carriers under the name of pooling or otherwise. I represent a class of shippers, and I believe to-day a great majority, who think the railroads are not as unreasonable as the class of shippers who are now agitating for amendment seem to think they are. Everybody, I think, is against unjust discrimination. The question is how this may be remedied. My own belief, and the belief of many shippers who think as I do, is that in amending the Interstate Commerce Law, the findings of the Interstate Commission as to what rate is reasonable should not go into effect until they have been reviewed by the courts. It is too much like hanging a man first and trying him afterwards. We believe, however, that there is a just complaint against the delay of the courts in arriving at decisions, and that this may be best met by the constitution of a new court—a court exclusively charged with the consideration of these questions—which could take up the findings of the Interstate Commerce Commission and speedily adjudicate them. A court would have a permanency, which the Interstate Commerce Commission has not in its membership, and would thereby be less exposed to political and other influences than the members of the Interstate Commerce Commission are. We were fortunate in establishing the Interstate Commerce Commission to have a jurist like Judge Cooley as its first chairman. We are fortunate in having as its present chairman a man like Judge Knapp, and I believe if all his associates were as judicial and able as Judge Knapp that we would not have 93 per cent. of the decisions of that Commission reversed, as they have been—that is, 93 per cent. of those decisions which reached the Supreme Court of the United States—hence we should, I think, address ourselves to these two points, first, as to having some means established by which the decisions of the Interstate Commerce Commission can be speedily reviewed; and second, to give railroads the same right to contract that every other individual and every other corporation in this country has.

WILLIAM F. FOLWELL: *Mr. Chairman and Gentlemen:* I feel disposed to use a minute or two in what I am sure many of you will think an unnecessarily radical and revolutionary proposition; but when I hear discussions upon rates of this kind, interesting as they are and valuable as they are, I still think there is a deeper question in regard to rates which ought to be had in mind. We have been discussing rates from the standpoint of railway ownership. We have not discussed them from the standpoint of the general public. All the speakers, I think, have agreed, and all others will agree, that the railway has become a public carrier; it is a servant of the public through and through. It cannot be regarded any more as a private common carrier. Now, I wish to make this revolutionary proposition, that transportation has become absolutely necessary to every individual. I cannot live unless the railroad brings to my door the means of subsistence; it is absolutely impossible. I submit this proposition, and I will take the risk of being called socialistic, that there should be no more chance to make money out of transportation than there is in carrying the mails. What do you think of that? I think that is a proposition you ought to consider. There should be no opportunity of exploiting the public by means of this absolutely necessary function, and I am going so far in my teaching as to say this. I am not in favor of government ownership, but I am in favor of an arrangement by which railroads shall be constructed and operated in such a manner as to pay the wages and salaries, all the salaries necessary to secure the very best talent; to pay a fair interest on all the capital or all the wealth that is actually in the road and no more; to maintain a fund for maintaining the road, and for such extensions as may be necessary; and for paying a fair, ordinary tax; and then when all these expenses have been paid any excess of income should go into the public treasury. That would make the business of rate-making simple. Another thing to be remembered when rate-making is under discussion, which has been omitted altogether this morning, is classification. When this has been established your rate-sheet is half made.

EDWARD P. RIPLEY: In the first place, I would like to discuss for a moment the suggestion made by Professor Gray as to the desirability of making the decisions of the Interstate Commerce Commission effective at once. The objection to that, in my mind, is that it reverses all legal practice and is—as was stated a little while ago—like hanging a man first and trying him afterwards, especially in view of the fact that a great majority of the cases which have been appealed from the Interstate Commerce Commission have been decided adversely to the Commission, and that in case of a decision adverse to the Commission there is no way by which the wronged party—that is the railroad—can get redress. If the Commission says that one dollar is too high and the rate must be 80 cents, and the railroad must go on charging 80 cents until the decision of the Commission is reversed, what redress has the railroad? On the other hand, if the practice is reversed from that, and the railroad is permitted to go on charging the old rate until the decision is sustained, every shipper has recourse against the railroad. They might make the railroad give a bond, if you please. It would be manifestly unfair that any party to the controversy should be injured to that extent pending the settlement of the controversy itself.

One other word as to the point made by the last speaker. I don't represent or speak for all the railroads in the United States, but I think their owners would be very glad to accept some such proposition as he suggests, namely, that the government guarantee a fair interest and fair return on their present value and take the surplus. Furthermore, as to his allusion to the postoffice and the comparison made between the postoffice and the railroad, I will agree to organize a syndicate which shall take the transportation of the government mails off its hands, shall do the business in every respect as well as it is done now, and not charge eight, nine or ten million deficit as is now charged.

EDWARD B. WHITNEY: I represented the Interstate Commerce Commission at the time of these cases which have been alluded to, when it was decided that they could not "make

rates." What the Commission wanted to do was, when they found that a rate was unreasonable, to say "You shall reduce it to not above such and such a figure." The Court did not allow them to do that, and therefore their decisions became practically a nullity. I saw a good many of their decisions at that time. Some of them were better than others; but it seemed to me that their work in those times was distinctly superior to that which was done by the judges who reviewed them. As I said earlier here to-day, the cases were not heard by the Commission on the evidence on which they were heard by the court. The best known was the Alabama Midland case, where the railroads put in a little evidence before the Commission; the order was made, and then they went and put in a large volume of depositions before the court. It was on those depositions, on which the Commission never passed at all, that the railroads won. One of the points in that case was whether a town called Columbus, Georgia, should have a better rate than Troy, Alabama. Columbus got a better rate because it had competition by the Chattahoochee river. The facts turned out to be that the Chattahoochee river is navigable—only six months during the year—to vessels not drawing over three and a half feet of water, although the navigation is much interfered with by over-hanging trees. I hope too great weight will not be put on the argument that the courts reverse the Commission. The Commission was differently constituted then. I have not had occasion to read their recent decisions. They may be as bad as the railroads say they are. But it seems to me that if you ever do have a commission to make rates or fix rates, it ought to be a commission whose decisions on questions of fact are final and should not be reviewed by any court at all. Have the court decide only whether the great principles of law have been observed, as by giving the parties due notice and a hearing.

HORACE WHITE: The crux of this question as between Mr. Ripley and Judge Knapp appears to be, how are the railroads going to get their money back in case an appeal is made and they win the appeal? He says the railroads can, if neces-

sary, give a bond. Why can't the plaintiff give a bond also? I have been engaged in litigation where I took an appeal, and I was required to give a bond whether I wanted to or not.

TENDENCIES IN RAILWAY TAXATION.

HENRY C. ADAMS.

In searching for the trend of railway taxation, it would be an error to assume the existence of a separate and independent system of corporate taxes. This assumption has been frequently made by writers upon American finance, but in so doing they fail to distinguish between the underlying principles of a system of taxation, on the one hand, and the machinery for administering that system, on the other. So far as methods of assessment and collection are concerned, it is true that railway corporations are placed in a class by themselves, but it is not true, speaking generally, that the theory of public contributions applied to them differs from the theory which is applied to other classes of property. That system of taxation known as the general property tax, is as strong to-day as it ever was in the history of our country; indeed it is stronger, if we are to judge from the changes that have taken place in the laws of the states during the past twelve years.

DISTINCTION, IN TAXATION, BETWEEN RAILWAY AND OTHER PROPERTY.

A glance at the laws of railway taxation in the several states and territories gives ample support to the claim that these laws fail to introduce any new principle into the established system of local taxation. Including the District of Columbia, and excluding Alaska from the list, local government in the United States is represented by fifty states and territories. Of this number only two, Rhode Island and the District of Columbia, make no distinction in the matter of taxation between railway property and other property. That

is to say, these political divisions fail to provide even special methods for the assessment and collection of railway taxes.

THIRTY-NINE STATES MAKE RAILWAY PROPERTY, PERSONAL AND REAL, THE BASIS OF TAXATION.

There next comes a list of thirty-nine states which make the general property of the railways, including both personalty and realty, the basis of taxation, but which provide machinery for assessment of railway property different from that employed in the assessment of general property. The character of this administrative machinery is of no importance as bearing upon the question under consideration. Nor does the fact that some of these states make an assignment of railway assessments to the minor civil divisions through which the railway runs, while others distribute the money collected, and still others keep this money for state expenditures, bear upon the problem in hand. The important fact is that the system of local taxation in these thirty-nine states expects railway property to pay for the support of government an amount in proportion to the value of the property, the same as in the case of general property. These thirty-nine states, like the two already mentioned, making forty-one in all, are properly included within the jurisdiction of the general property tax.

WITH THE EXCEPTION OF THREE STATES, RAILWAYS ARE TAXED ACCORDING TO VALUE.

There are six states, Delaware, Massachusetts, Connecticut, New York, Pennsylvania and Kentucky, which tax railway property according to its value, but assess the tax to the value of stocks and bonds rather than to the value of real and personal property. In all cases, with the exception of Connecticut, this tax upon stocks and bonds is supplemented by other forms of taxation. It is, however, the *ad valorem* and not the specific tax that gives character to their taxing systems. It thus appears that forty-seven out of the fifty states and territories aim to tax railways in proportion to their value. The remaining states, Maine, Maryland and Minnesota, have

adopted a system of specific taxes, making gross earnings the measure of the duty of railways to pay for the support of government. Two states, Vermont and North Dakota, give the railways the choice between paying upon an *ad valorem* or a specific basis, although in the case of North Dakota the court has ruled against the gross-earnings tax. The states of Ohio and Texas also tax railways upon the basis of gross earnings, but make this a supplemental or additional contribution. Five states adopt the essentially pernicious method of supporting their railroad commission by means of a special tax on earnings. Other minor differences might be mentioned, but they would not affect the conclusion that, with the exception of Maine, Maryland and Minnesota, railways are taxed according to the value of their property, and that both common law provisions and constitutional rules relative to equity and justice in taxation require that they pay a rate equal to the rate of other property upon their cash or par assessment.

THE UNIT RULE IS NOT A NEW PRINCIPLE.

It has sometimes been claimed that the application of the unit rule in the valuation of railway property, a rule which has received the approval of the courts, amounts to the recognition of a new principle of taxation. With this opinion I cannot agree, at least as far as the original application of that rule is concerned. The unit rule is nothing more than the application of an old principle that property must be valued according to the use to which it is put. It is but the recognition of the fact that the commercial value of railway property depends upon its continuity from county to county and from state to state. It is the logical result of the expansion of commercial properties beyond the limits of the local taxing jurisdiction. The unit rule of assessment is in perfect harmony with the assumption that value is commercially homogeneous, and implies no criticism upon the underlying theory of the general property tax. It, like the laws of the states passed in review, pertains to the application of the general property tax to interstate properties, and does not suggest, at least in any direct

manner, that the value of a railway may differ both socially and industrially from the value of a factory, or that the value crystallized in the property of a railway may itself be subject to analysis and classification according to its character or the source from which it arises.

RECOGNITION OF A FRANCHISE VALUE.

The courts have, however, taken one step which may prove to be a point of departure for the development of new principles in the taxation of railway corporations, a step with which the later application of the unit rule, as for example the Ohio Express cases, are in perfect harmony. I refer to their recognition of a franchise value. It is not necessary to go into the details of these cases nor to discuss the propriety of the rule accepted for the measurement of franchise values. The significant point is that the courts have taken judicial cognizance of a value in excess of what may be termed the inventory value or the value of the physical properties. This being the case, the question at once arises, what is the source, the social character and industrial quality of this excess or surplus value? The further question, also, claims consideration. Should an analysis of this value prove to be in any way peculiar, do the principles of equity and justice, which are acknowledged to lie at the basis of taxation, require the taxation of this value in a peculiar manner? To answer these questions calls for an analysis of what for convenience may be termed the surplus value inherent in the property of a prosperous railway, and it is to this analysis that I now invite your attention.

SURPLUS VALUE THE PRODUCT OF ORGANIZATION.

Speaking generally, the value of the intangible, immaterial or non-physical element of an industry is the product of organization, a productive principle recognized by Adam Smith, the importance of which has grown with each step in the development of industry. Such an observation, however, is of but slight importance, for commercial organization is

itself of many sorts and followed by various results. Our analysis will be more fruitful if we substitute for so glittering a generality an enumeration of some of the more important elements to be found in surplus value as it inheres in railway properties.

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SURPLUS VALUE—THE FORMAL VALUE OF THE FRANCHISE.

1. This value covers, in the first place, the value of the franchise, that is to say, the value of the right to be and to act as a corporation. An assertion of a franchise value as a distinct form of value, however, is submitted as a concession to legal lore rather than because it is believed to be of very much importance. It is undoubtedly true that a franchise carried with it an independent value when the right to be and to act as a corporation was an exclusive privilege. At present, however, general corporation laws have destroyed whatever value pertained to a franchise on account of its exclusive character. If there be a surplus value, it must be found in the nature of the industry in question, or in the relation which that industry bears to the principle of competition, and not in the fact that a particular body of men are at liberty to exist as a corporation. The surplus values which we are now endeavoring to explain is something more than the formal value of the franchise.

SURPLUS VALUE—A VALUE IN EXCESS OF INVENTORY VALUE.

2. Holding in mind the business of transportation by rail, this value includes, in the second place, the possession of traffic

not exposed to competition, as, for example, local traffic. There are, of course, commercial limitations to the value accruing to a railway corporation from this source. For example, the rates for non-competitive business are more or less influenced by the rates for competitive business. The curtailment of demand through excessive charges, also, as well as all those considerations which find expression in the law of monopoly price, act as a commercial restraint in the adjustment of local railway tariffs. But, notwithstanding all that may be said in this vein, it yet remains true that commercial considerations offer no guarantee of just and reasonable rates when judged by ordinary business standards; and the margin of surplus earnings thus rendered possible becomes the basis of a surplus value, that is to say, a value in excess of the inventory value of physical elements.

SURPLUS VALUE—CREATED BY AMALGAMATIONS AND CONSOLIDATIONS.

3. The non-physical value of the railway includes, further, the value which arises from the possession of traffic held by established connections. The fortunes that have been made in the railway business during the past fifty years have resulted largely from the organization of independent companies into great railway systems. The important point for this analysis, however, is that the amalgamation of connecting lines, as well as the consolidation of competing lines, gives to each member of the operating system thus created a class of traffic which it might not otherwise be able to hold, and consequently confers upon each member of the system a value which it might not otherwise possess; and, when it is remembered that the rates at which this traffic is moved are not exposed to the competition which would exist were it not for the organization of railway properties into systems, it is evident that this element of value is likely to be of considerable importance. From the point of view of the influence of competition upon the earnings of railway corporations, the difference between the so-called competitive and non-competitive traffic is less than is commonly supposed. Whether traffic be local or through,

competition is no guarantee that it will be carried for what it costs to render the service.

SURPLUS VALUE—CREATED BY DENSITY OF TRAFFIC.

4. The intangible value includes, in the fourth place, the benefit of economies made possible by the increased density of traffic. This statement rests upon what is universally recognized as the fundamental business principle of railway transportation. It means that the growth of population and the consequent increase of traffic which results from the growth forces a value into the treasuries of railway corporations with which the superior ability of those by whom railways are administered cannot be accredited. Were this business exposed to the influence of competition, the value in question would be dissipated to the public through a reduction in the price of service. For many reasons, however, this is not possible in the case of the business of transportation, and as a consequence the value resulting from economies rendered possible by the increase in traffic comes into the possession of the corporation rendering the service.

SURPLUS VALUE—CREATED BY ORGANIZATION AND VITALITY.

5. Lastly, the intangible value of a railway corporation includes a value arising on account of the organization and vitality of the industry which renders the service. This value is in the nature of an unearned increment to the corporation. It may be said that all industries are interdependent, and that every business depends for its prosperity upon the prosperity of those who are its customers. This is undoubtedly true, but it is equally true that, unless all industries are equally exposed to competition, or upon the same basis so far as concerns their ability to avail themselves of the advantages of monopoly, some will be able to maintain the value that accrues on account of the widespread development of industrial technique while others will be forced to give up. The significance of this observation in the analysis of surplus value becomes evident when it is regarded as an answer to the claim that the railways have created the wealth of the

world and that their compensation cannot, therefore, be too highly appraised. It is a mistaken analysis that overlooks the close interdependence of all the agents of industrial prosperity.

SURPLUS MONOPOLY VALUE A SOCIAL PRODUCT.

If the above analysis of the origin and nature of surplus value, as it appears in the case of a prosperous railway corporation, be correct, it is evident that this value exists because it fails to be diffused to the public through the agency of commercial competition. Were competition able to keep the price of the service of transportation in the case of each and every railway down to the cost of the service rendered, or were it good policy for the government to define a reasonable rate as a rate which coincides with the cost of service, including normal profit, no such value as that under consideration could exist. The capitalization of railways, and consequently the assessment of railway property for the purpose of taxation, would tend to be the cost of reproducing the plant, as in the case of manufacturing properties, whose balance-sheets are continuously exposed to the adjustments of competition. This means that the surplus value of a railway corporation is monopolistic in its origin in the same sense, though not for the same reason, that the capitalization of the rental value of real estate is monopolistic. It is a value contributed by the public to the corporation because of the imperative character of the public demand for transportation. It results from the fact that increased density of traffic, due to the increase in population and to the development of general commercial activities, provides the railways with an ever-increasing opportunity of availing themselves of the productive principle which lies in organization. The relative amount of this surplus value, which should be credited to railway managers on the one hand, for availing themselves of the opportunities of increased economies, and to the public whose industrial activities furnish these ever-broadening opportunities, is not here in question.

THE PUBLIC A JOINT PROPRIETOR WITH RAILWAY CORPORATIONS.

The important fact is this, that a portion of the surplus value now enjoyed by railway corporations is a direct contribution from the public, and that competition is incapable of diffusing this value through a reduction of the price of the service. It is a socially produced value and the logical application of the principle which lies at the bottom of the institution of private property, namely, that he who produces a thing should be its proprietor, will lead to the conclusion that the public is a joint proprietor with the railway corporations in the property which they control. This at least is the question which, as it appears to me, the attempt to secure a just system of taxation as between railway property and other property will be forced upon the consideration of the courts, and, should the courts acknowledge the accuracy of the analysis here suggested, and extend their definition of property to include a quasi-public property as they now acknowledge a quasi-public industry, a radical modification of the system of taxation becomes operative. The situation disclosed by this analysis is one for which the theory of the general property tax makes no provision. That theory assumes value to be homogeneous, whereas the foregoing analysis makes it clear that this is not the case. The tendency in railway taxation of which this paper speaks is not to be found in the statutes, but in the necessities of the situation. If my analysis be correct, it follows without question that the underlying principle of the financial system of the future will be the recognition of a joint proprietorship between the public and the corporations in all cases where surplus value proves to be a permanent feature. This, of course, assumes that a socialistic program will not be realized.

DISCUSSION.

WILLIAM W. BALDWIN: It is claimed by many to be the law that investments in railroads are no longer to be regarded as private property for the purposes of profit.

The merchant, the manufacturer, the banker, the farmer,

the miller, the ship-owner may derive whatever profit he can from the lawful use of his property and talents, taking the risk of loss; but it is said that the investor in a steam railroad is limited to what is called a fair return upon the value of the property used, which, being calculated, is held to mean a return based upon the lowest generally prevailing rates of interest, and without guarantee of any return, and notwithstanding he takes the risk of loss, and often loses. If returns show a larger profit, demand is frequently made that the state reduce the rates, that is, the price a railroad may charge for the service rendered; and, the property being held to be public property, because employed in the business of carrying for the public, the state does reduce the rates.

TAXATION AND SOCIALISM.

Now, this status of railroad property, this limitation by law of its earning capacity, should, it seems to me, be taken into consideration by economists in framing laws for its taxation, especially if such laws have a social object. Professor Seligman says that taxation may be utilized for social purposes, and speaks of socialists, extreme socialists he calls them, represented in academic circles in this country, who maintain that the social problem is the great problem, and that a tax is not a tax, unless it has a social object, as distinguished from a fiscal object. In a sense, of course, all taxes are collected for social objects, but in this connection is meant the distinctly socialistic purpose of appropriating, through taxation, as distinguished from the exaction of an equal contribution in proportion to value to meet the fiscal needs of the state.

Are we entering upon a period of such social taxation, or appropriation of railroad property? Are we to have a system of tax laws applicable to railroads only, and based upon the view that this one class of property in this country has no moral right to earn more than a specified rate of interest or return upon its cost, without guarantee of any return, and that if a railroad shows a surplus, beyond the specified rate, such surplus may be, and ought to be, reached through the taxing power?

GOING A STEP TOO FAR.

Treating railroads as quasi-public property, and restricting their right to surplus earnings through reduction of rates, is subject to this powerful limitation which the courts have inserted—that they shall be permitted to earn *some* return upon the investment. But no such limitation will, it seems, be written, even by the courts, into a tax law. The taxing power is practically without limit. The power to tax is the power to destroy. Does the suggestion not appeal to economists who are not socialists, that it is going a step too far to devise taxation as a means of reaching surplus, exclusively for this form of property, now so largely held for investment? It is true that, during the past five-year period, railroads have been prosperous, but not more so than many other lines of business; and, in the previous five-year period, they saw much of adversity, and entire investments were wiped out, which fact cannot be and will not be taken account of in fixing the rate they should now be permitted to earn. Those who are familiar with the subject of railroad taxation know the practical impossibility of reducing the tax, in the face of public opinion, whatever depressions in business may be experienced; hence the greater care should be exercised in adopting a policy intended to reach present surplus railroad income through taxation.

TAXES SHOULD BE UNIFORM.

That taxes, the means of supporting the government, should be levied with equality, and their burden rest uniformly upon all subjects on which they are laid, is a correct principle, in economics, as well as imbedded in the constitutions of the states. Over and again courts have said that, "A sound tax law must equally distribute its burden among the citizens according to their property."

What reasons, then, are urged for applying exclusively to railroad property a tax system, based upon reaching their surplus earnings, after allowing a rate of return upon property deemed to be socially or ethically sufficient, while no attempt

is made to reach the surplus of other citizens and their property by similar methods?

In prosperous times many, if not most, lines of business show surplus income. What economic reasons are given for applying these methods to railroads only?

It is said that the railroad is a peculiar property, and the peculiarity is that commercial forces fail to dissipate its surplus earnings; which is only another way of saying that its surplus is more permanent or more to be depended upon than is seen in other industries.

Also, that, because the state requires complete reports from railroad companies, the amount of their surplus is more easy of ascertainment.

NO ONE MUST FIGHT HARDER THAN RAILROAD COMPANIES TO PREVENT DISSIPATION OF EARNINGS.

The first reason does not appear to be borne out by experience. The profits of railroads seem to fluctuate with good and bad times and conditions, as much as do those of other industries, as a class; and their surplus is as quickly dissipated by the blasts of adversity. The average net earnings per mile of the Burlington road for the four years prior to the year 1887 were $3,420, while the average for the succeeding four years were $1,618 per mile, one of the consequences of the enactment of the Interstate Commerce Law, and of a strike of locomotive engineers, which may occur to any railroad. At the mercy of the legislature and the Commission in the matter of rates, and of the labor union in the matter of wages, no class of property, it seems, must fight harder to prevent the dissipation of its earnings than that owned by railroad companies.

AN INCOME TAX SHOULD BE IMPOSED ON ALL INDUSTRIES IF UPON ONE.

Another answer is that, if the railroad industry is to be, in effect, subjected to an income tax, some endeavor should at least be made to apply similar methods to other industries;

and then, whether their income proves to be temporary or permanent in character, the test will be the same. Regarding the matter of reports, the answer is—get the reports; require other industries, as well as railroads, to furnish them; make some honest effort to lay the income tax upon other industries.

Another reason is based upon an assumption that really goes to the root of the whole matter, namely, that other industries and property are, in effect, taxed in proportion to income, through assessments of value, fixed from frequency of sales, while, in the case of railroads, no such sales can guide the assessor, and, therefore, a method of assessment through income must be devised.

The assumption is not founded upon fact. Other property is not taxed in proportion to income through the sales test; it is not assessed at its value by any test.

The State Board of Assessors of Michigan announced their finding, that the true value of the general property in that state for the year 1902 was $1,715,000,000. The assessment in fact of the same property for the same year was $1,418,-251,858, a difference of more than 20 per cent. There is hardly a doubt that, if the investigation of the State Board of Assessors had been thorough, and especially if the assessments upon the general property had been levied upon any basis of income, the disparity would have reached 50 per cent.

THE MICHIGAN PLAN—AN INCOME TAX.

But, notwithstanding the apparent lack of adequate reasons, there is now in operation in the state of Michigan, unless the courts forbid, a plan for the taxation of the railroads of that state largely upon the basis of income, which is dependent for its results upon the social view that railroads are entitled to earn only a certain designated amount.

It is suggested that the Michigan legislature adopted this so-called *ad valorem* tax law for railroads upon proof that under the gross earnings tax system they were paying less taxes in proportion to the true value of their property than the general property of the state. But this point loses force when it is known that this proof consisted of nothing more

nor less than theoretical deductions and conclusions of value previously worked out by capitalizing income at certain low percentages, by the very same experts.

EVIDENCE OF PROFESSOR HENRY C. ADAMS.

That it amounts to a capitalization of goodwill, under the names of "organization" and "vitality" and "franchise," and is in effect an income tax, administered with the social purpose of restricting income through taxation, seems clear enough from the following report of the evidence of Professor Henry C. Adams in the pending suit. The question was asked:

"Now, what is the difference between this net earnings theory of valuation for the purpose of arriving at the tax and an income tax upon the net income? I mean, not in appearance, but in fact."

Ans. "You have reference to the capitalization of the net earnings direct at a single rate and for a single year?"

Q. "Yes, sir."

A. "I don't think there is any difference except the formal difference that in one case the tax is levied upon a valuation discovered from the earnings, and in the other case it is levied directly upon the earnings; the amount to be paid, other things being equal, would of course be the same."

Q. "So that practically it is a tax based upon the income, isn't it, and not upon a valuation of the property?"

A. "The tax levied upon the capitalization of net earnings year by year amounts to a tax levied upon the earnings themselves; yes, sir."

Q. "The only difference in form is that you capitalize the earnings before you apply the tax, instead of putting it directly upon the earnings?"

A. "Yes, sir."

Q. "That is to say, that, when applied to the capitalization, the tax appears to be lower than when applied directly to the income?"

A. "Yes, sir."

The fact of applying this process year by year, or every five

years, upon the average of the earnings each year for five years, seems to be a distinction without a difference. Indeed, Professor Adams stated in his evidence that the adoption of an average of net earnings over a period of five years was not prescribed in the law, but he added: "In order that the law may be administered as an *ad valorem* tax, and not as an income tax, this method does take a period of years." That is equivalent to saying that it was a mere device to save the face of the law and have that pass for an *ad valorem* statute which is, in fact, an income tax.

PRACTICAL APPLICATION OF METHOD.

The method of administering this process shows that it is really an income tax, the size of which is determined, not by the law, but by the expert's opinion of what rate of return he thinks the owners ought to be satisfied with, taking into consideration the prevailing price of first-mortgage railroad bonds, and other evidence. The rate decided upon for the Michigan Central was 3½ per cent., and the method pursued, as I understand it, was this:

APPLICATION TO THE MICHIGAN CENTRAL RAILROAD.

The net income of that company for Michigan was said to be $2,503,345. This income was divided into two parts. The greater part ($1,590,352) was capitalized at 3½ per cent., as in his opinion this particular company should be content with that rate of return upon its capital to the extent of $43,438,599, because that sum represented the estimated cost of reproduction in present form of all its property as determined by Expert Engineer Cooley and his investigations.

The remainder of income ($913,000) was then capitalized at 5 per cent., producing $18,259,880, which, being added to the property value, produced $63,698,469 as a tax valuation recommended to the State Board. Upon this theorized valuation there was to be levied, not the tax rate to be paid by other property in Michigan in proportion to value, but substantially double such rate. The rate, in fact, levied on all railroads was over 16½ mills on the dollar. Professor Adams

expressed the opinion that the property, in fact, assessed in Michigan was assessed at 65 per cent. of value, and deduced therefrom the conclusion that the true average rate of taxation was 10 mills; yet this railroad property being first given an exaggerated valuation, then had levied upon it a rate of 16½ mills.

STATEMENT OF METHOD OF ASSESSMENT BY MICHIGAN BOARD OF STATE TAX COMMISSIONERS.

I will read from page 55 of the Report of the Michigan Board of State Tax Commissioners for 1902, their statement of the method:

"The investigations pursued by Professor Adams covered the economic side of the question of railroad valuation. He took the gross earnings of the various companies and averaged them for periods ranging from four to ten years. The same average was taken in the case of operating expenses, and the difference between the two produced the average earnings from operation. To this sum was added the net income from investments, and the result obtained was called the 'Total Available Corporate Income.' From this result three items were deducted, namely, 'Rents of Michigan property not included in Cooley Appraisal,' 'Interest on interest-bearing Current Liabilities,' and 'Permanent improvements in Michigan charged to Income.' This process of calculation resulted in either a 'Surplus from Operation' or 'Deficit from Operation.' The 'Mean value of Physical Elements,' computed from the Cooley Appraisal, was a figure obtained to correspond to the average amount of physical property in use by the railroad company during the period of years for which the average of gross earnings and operation expenses was taken. On this mean valuation a tax of one per cent., plus an annuity of four per cent., was computed, and the sum of such tax and annuity deducted from the 'Surplus from Operation,' resulting in either a 'Net Corporate Surplus' or Deficit. This difference or net corporate surplus was then capitalized at various rates in the case of different properties, ranging from four to ten per cent., according to the security

of the business of the specific company under investigation."

This indicates that the basis of the State Board's valuation and assessment was largely the capitalization of income upon the theories proposed; that it rested upon income averages furnished by Professor Adams, running from four to ten years, and upon widely differing rates of capitalization upon income, also furnished by him, and depending upon his opinion of what years to take, and what rates of capitalization to apply, ranging from 3½ to 10 per cent., according to his view of what the owners of the various classes of railway property in that state ought to be satisfied with, or what the social good requires them to accept.

ROADS SHOWING NO SURPLUS ARE TAXED ON PROPERTY VALUES.

But these theories are only applied to roads whose operations show a surplus. If there is no surplus to be reached, another method attaches. Measured by income, a road whose operating expenses consume all its income in fact possesses only a nominal value. But, in dealing with that class of railroads, the State Board in Michigan, to a large extent, ignores the matter of income. In such cases, the estimate of the engineering expert controls, based upon cost of materials and labor. The Board says in effect: "There is the property, and if the owner was improvident in locating his property, and is conducting his business as a public benefit, without reward, although involuntarily, that is no concern of ours; our duty is to assess 'property' in his case."

Of date, April, 1903, the State Board placed a valuation of $55,500,000, or $55,000 per mile, upon the Michigan Central, which the engineering expert had valued at $32,000 per mile.

The Northwestern line (521 miles), with virtually no income, was valued at $27,000 per mile, because, and only because, that was the engineer's estimate. Although valued upon radically different theories, the same rate of tax (16½ mills) is levied upon both of these roads.

A TAX GREATER THAN NET EARNINGS.

In 1902 the net earnings of the Northwestern road in Michigan were $445 per mile, and the taxes levied by the State Board were $468 per mile; in 1903 the earnings were $568, and the taxes $454. These were both years of unusual prosperity. When the adverse period comes, the taxes will remain but the earnings will vanish. Are they having in Michigan a lesson in the problem of how to utilize railroad taxation for social objects?

THEORY OF NON-PHYSICAL VALUE.

One cannot fail to be interested in the argument by which income seems to be made to perform duty as being or representing an "immaterial" or theoretical property element, supposed to inhere peculiarly in a railroad. The Michigan law is an *ad valorem* law, which renders it necessary to define the elements of this immateriality; and they are accordingly defined in the letter of Professor Adams to the State Board of Tax Commissioners, dated October 4, 1900, as "franchise," as "the possession of local traffic," as "the possession of traffic held by established connections," as "the benefit of economies made possible by density of traffic," and "the fact of organization and vitality existing not only in the railroad but in other industries which it serves."

MORE EVIDENCE BY PROFESSOR HENRY C. ADAMS.

He was asked this question: "In the final result, does it make any difference what the elements of the non-physical property consist of?"

Ans. "Not according to this rule."

Q. "You named some of the elements. Now strike out every one of those elements except one, and would not the result be exactly the same as if they are all considered?"

A. "The result in figures would be the same."

In amplifying this view of certain non-physical elements as being "property" of a railroad which ought to be taxed, Professor Adams said: "A railroad is more valuable which

runs through a territory full of bright, energetic people;" also that, "Intelligence, sobriety and willingness on the part of laborers to submit themselves to discipline are conditions under which industries exist and which make them succeed;" that, "The railroads of the North are more valuable than those of the South, on account of the nature of the employees and the people;" and, while discussing the question of "organization" and "vitality" as taxable elements, he said: "If the schools of Michigan were disorganized for a generation, the railroads would not be worth very much."

Other features and conditions, almost without limit, could, of course, be named, which potentially affect the earnings, and incidentally the value, of railroads, such, notably, as the character of their traffic, and, above all other influences, the ability of their managers and the extent to which they can secure remunerative rates for their business; but who will capitalize these elements?

ALL NON-PHYSICAL PROPERTY IS AN ELEMENT OF GOODWILL.

I do not understand that Professor Adams has made an estimate of values for "traffic density," nor for "organization," nor again for "vitality," any more than an estimate of value for the presence and efficiency of the Michigan schools. Why? Because they are, one and all, simply features of the goodwill of a railroad, in the same way that similar features constitute the good will of any business. The only means of valuing them suggested is by capitalizing earnings; and, in its results and effects, it is an income tax pure and simple, and it only confuses the subject to pretend otherwise.

There in no income tax in Michigan, and no evidence that any other class of property in that state is taxed upon its good will, as such.

AD VALOREM TAX RESTS UPON PROPERTY.

Economists say that the fundamental idea of an *ad valorem* tax law is, that it rests upon property, without regard to ownership or the proportion of protection furnished, and with-

out regard to the ability of the owner to pay—a uniform rate to be levied upon all property in proportion to its value.

AN INCOME TAX RESTS UPON ABILITY TO PAY.

An income tax, on the other hand, rests entirely upon ability to pay, as measured by income. When the income is derived from property, it is taxed regardless of the value of the property itself. Vacant land, however valuable, produces nothing to the income tax, while property, such as a telephone system, having small value apart from its peculiar use, may show large receipts which an income tax would reach. Governments decide which system, the property tax or the income tax, is, on the whole, best suited to their conditions and necessities, and it is easily conceivable may adopt a system combining the two, that is, for taxing the land and all interests in land, and all tangible personalty, according to value, and likewise taxing all incomes, with adequate provision against double taxation, that is, that no property which has paid the *ad valorem* tax shall in addition pay an income tax.

Such an income tax law would be carefully drawn, and all interests be guarded so as to ensure equality and uniformity between taxpayers. But that is a totally different affair from an income tax administered as an *ad valorem* law, or an *ad valorem* law administered as an income tax. In the first case, income might be determined, not from actual receipts, but from expert calculations of what income ought to be produced from property having a certain estimated value. In the second case, value is determined from income capitalized. Still different is an *ad valorem* law administered with a social purpose, that is, through the selection of a certain class of property, and limiting all property in that class possessing income to a percentage return deemed socially sufficient, and capitalizing such property upon that percentage, while all other property in the class is valued at cost of reproduction in present form, without regard to income.

OPPORTUNITY FOR BRIBERY GIVES OPPORTUNITY FOR BLACKMAIL.

A well-known economist recently made a public plea, on moral grounds, for taxing railroads and similar public service corporations by some mathematical rule that will eliminate the necessity for the exercise of discretion by assessors, saying that "Opportunity for bribery gives equal opportunity for blackmail."

Any one who will master the process of making a valuation of the different Michigan railroads under the so-called *ad valorem* system, as administered in that state, will find an amount of discretion, and an assortment of various kinds of discretion, that seems to be without parallel.

RESULT IS EXCESSIVE TAXATION.

That the installation of this method in Michigan, if approved by the courts, will result in excessive taxation of railroads, compared with other property, goes without saying.

JUDICIAL AND EXPERT OPINIONS ON THE PROPER RATE.

Judge Grosscup deemed the capitalizing of the earnings of a street railway as a measure of the value of its franchise, consisting, as it does, in the monopoly of the streets of a great city, at the rate of six per cent., to be a fair rate, considering the risks and the necessities for renewals, etc.

A commission of well-known experts, asked recently to find the proper scientific basis for compensating parties contracting with the government for pneumatic tube service, in order to allow investors a fair return, reported as follows:

"That the investors be entitled to a return on their investment, over and above operation and ordinary repairs and maintenance, as follows:

	Per cent.
1. Interest on the actual cash investment.....	4
2. Additional profit on the actual investment, in order to compensate for risks, necessary in order to induce investments.....	3 to 6

3. Renewal fund, to be set aside for replacement of the property in twenty years	3.23
4. To pay taxes of all kinds	1
Maximum total	14.23
Minimum total	11.23

"This amounts to saying that an investor, putting cash into a public utility plant, should have a compensation, if his plant be of a sort that it may quickly be worn out, or become obsolete by reason of new inventions, or other displacement, of 14.23 per cent.

"If the plant be of an enduring character, as, for example, a masonry dam, in the case of waterworks on a site that is owned in fee, the risk of deterioration diminishes; and the total return which the investor may require is reduced to 11.23 per cent."

Such percentages, applied to the income of Michigan railroads, would manifestly produce a radically different valuation of those roads which have a surplus, from that announced.

Capitalization of the $2,500,000 net earnings of the Michigan Central Company on the Grosscup plan would show a valuation of $41,666,000, instead of the $63,698,479 upon the same property and the same income, as proposed by Professor Adams.

Professor Emory Johnson, after full consideration of Professor Adams' method, stated in evidence that, in his opinion, a correct application of that method to the Michigan Central would take the average of net earnings for a ten-year period, and deduct therefrom six and two-tenth per cent. on the valuation of the physical property, and capitalize the net corporate surplus remaining at six per cent., plus the tax rate. Computed thus, the value of the "franchise" of the Michigan Central was found to be $3,227,000, as compared with the valuation by Professor Adams of the same franchise for the same year at $18,259,880.

Shall the amount of taxes which the railroad company must pay depend less upon its actual value and its actual income than upon the question of what expert is employed to fix the percentages and to make the calculations?

DIFFERENCES OF OPINION NOT CONFINED TO FRANCHISE VALUES.

Differences of opinion as to value in the Michigan estimates were, by no means, confined to the franchise feature. In the case of the Pere Marquette railroad, for instance, the engineer employed by the State Board found a present value, based upon cost of reproduction, of nineteen million dollars, while another equally competent engineer, representing the railroad company, determined the value of the identical property to be eleven million dollars.

QUESTION OF RATE AS IMPORTANT AS QUESTION OF VALUATION.

But the question of valuation is, after all, only a part of the problem. If, in fact, the rate of tax laid upon the real value of other property in Michigan is ten mills on the dollar, or less, why should railroad property, upon any method or by any system, be required to pay a rate of sixteen and one-half mills? No consideration of the so-called Michigan plan can be adequate which ignores this feature of the case. Economists apparently devote themselves to the question of devising theories for securing a complete financial estimate of all the features of a railroad, when the question which might well engage their attention in this connection is, What part of this value shall be subjected to taxation, in placing the tax burdens upon this class of property, the same as it, in fact, rests upon other property, in proportion to value?

Professor Meyer says that a railroad is worth what it can earn. Professor Seligman thinks that taxation of net receipts is a more equitable system of taxation than any other, and, speaking of the operation of the Ford bill in New York, says that its object is to hit the difference between the value of the tangible property and the total value of the corporation, or the good will of the business. Professor Adams' paper read to-day is devoted largely to showing that there exists a peculiar element of value in railway property, that may be reached for taxation by widening the jurisdiction of the general prop-

erty tax, so as to reach this peculiar value, meaning the value of the business as a going concern.

The Northwestern Railway, meanwhile, in the state of Michigan, with no change in its property and no addition to its earnings, finds its tax bill in the first year of this widening of the jurisdiction of the general property tax leaping from $78,000 to $234,000, and the proportion of tax to net receipts reaching a modest 105 per cent.

It will not do to say that economists are not concerned whether railroads are compelled to pay more than an equal share of the taxes of the state, in proportion to the value of their property, compared with all the other property. That is the very question about which they ought to be concerned. The aggregate assessment made by local assessors upon the real and personal property in the Michigan counties in which the Northwestern road is situated is below 50 per cent. of the true aggregate of such property, and the rate levied thereon does not exceed 10 mills; but the property of the railroad company, in the same counties, is assessed at over 100 per cent. of full value, and a rate of 16½ mills is levied upon that assessment. No fair-minded economist will justify such inequality. If, in the general assessment, through undervaluations and omissions from assessment, it results that the total valuation of the general property does not exceed 30 or 50 per cent. of value, that fact must have consideration in any logical or just administration of the *ad valorem* system. On the other hand, if income is made the test, a railroad is no more worth what it can earn than other property is worth what it can earn. If income is the most equitable measure of value, then provide an income tax that will reach the income value of all business enterprises alike.

CAN EQUALITY BE SECURED BY TAXING NET EARNINGS DIRECT?

The law of Michigan which we are now considering provides for the ascertainment of what is denominated the "average rate" of taxation, by dividing the sum of the valuation of the general property of the state into the aggregate tax

collected from the general property; and this so-called "average rate" is levied upon every railroad wherever located.

Is it not feasible to ascertain by investigation what is the true aggregate annual income of the general property of the state, and deduce therefrom the proportion of such income which, upon the average, is paid in taxes by the general property, and fix that as the rate which each railroad company shall pay upon its net receipts?

I am speaking now only of the economic, and not of the legal, aspect of the matter. Under the present system, we can draw from the general property, to compare with railroad property, no test except a local assessment, crude, contradictory, and made by the taxpayers themselves, or by those whom they elect to office, from which is deduced what is called an "average rate," to be levied upon railroads at excessive estimates of value, derived from capitalizing their earnings at low rates.

Economists can surely devise methods for ascertaining the proportion of earnings paid in taxes by property in general, and applying such rate to the net earnings of railroads, which will produce less inequality and injustice than grows out of such manifest mal-administration of the *ad valorem* law.

If I do not misunderstand Professor Adams, he may not dissent, in principle, from this view of broadening the income tax. Referring to certain manufacturing industries doing business under conditions which may secure to the proprietors a return considered in excess of the normal return, he says:

"The government retains the right to regulate prices, if need be, so as to extinguish any surplus value."

He would doubtless be willing to add that the government, in addition to regulating the prices of such manufacturer, may also tax him, if need be, so as to extinguish any surplus value in his property.

WHITHER ARE WE TENDING?

Are economists ready to inaugurate this tax system for such industries? Take, for illustration, the banking industry.

That capital employed in banking enjoys a much higher return than that invested in railroads is well known; and it, therefore, must be in excess of the normal. Shall government employ the taxing power as a means of extinguishing surplus value in the banks?

It may be of comparatively little moment that owners of railroads protest against the application of these methods to their property, as a class, and to no other property; but it is a matter of importance to us all to know whither we are tending.